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# **THE KENYA NATIONAL DIALOGUE AND RECONCILIATION (KNDR) MONITORING PROJECT<sup>1</sup>**

## **Status of Implementation of Agenda Items 1-4**

### **Progress Report For January - March 2010**

**April 2010**



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<sup>1</sup> Supported by a grant from Foundation Open Society Institute (Zug)

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## ABBREVIATIONS

AU	African Union
CDF	Constituency Development Fund
COE	Committee of Experts
CSOs	Civil Society Organisations
DK	Do not know
FGDs	Focus Group Discussions
GOK	Government of Kenya
IC/GLR	International Conference on the Great Lakes Region
ICC	International Criminal Court
ICT	Information and Communication Technology
IDPs	Internally Displaced Persons
IIBRC	Interim Independent Boundaries Review Commission
IICDRC	Interim Independent Constitutional Dispute Resolution Court
IIEC	Interim Independent Electoral Commission
IOM	International Organisation for Migration
IREC	Independent Review Commission on the General Election held in Kenya on 27 Dec. 2007
KACC	Kenya Anti-Corruption Commission
KEPSA	Kenya Private Sector Alliance
KHRC	Kenya Human Rights Commission
KIA	Kenya Institute of Administration
KKV	Kazi Kwa Vijana
KNCHR	Kenya National Commission on Human Rights
KNDR	Kenya National Dialogue and Reconciliation
KPTJ	Kenyans for Peace, Truth and Justice
LSK	Law Society of Kenya
MP	Member of Parliament
MTP	Medium Term Plan
MoSSP	Ministry of State for Special Programmes
NCCK	National Christian Churches of Kenya
NCIC	National Cohesion and Integration Commission
NCSC	National Civil Society Congress
NGO	Non-Governmental Organization
ODM	Orange Democratic Movement
PCK	Proposed Constitution of Kenya
PEV	Post-Election Violence
PNU	Party of National Unity
PSC	Parliamentary Select Committee
RTA	Refused to Answer
TJRC	Truth Justice and Reconciliation Commission
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
UPR	UN Universal Periodic Review

## EXECUTIVE SUMMARY

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1. Following the unprecedented political violence that engulfed Kenya after the disputed 2007 General Election, international mediation by the African Union (AU) Panel of Eminent African Personalities under the Chairmanship of Mr. Kofi Annan saw the Government/Party of National Unity (PNU) and the Orange Democratic Movement (ODM) agree to undertake several actions. These actions were aimed at stopping the violence and ending the political crisis. The agreements were signed under the auspices of the Kenya National Dialogue and Reconciliation (KNDR) forum.
2. This report is the first review report for 2010. It examines progress made in implementing the KNDR agreements in the period between January and March 2010. Previous report for 2008 and 2009 are found at [www.dialoguekenya.org](http://www.dialoguekenya.org). These reports have the accomplishments and challenges faced in implementing reforms. The reports have also noted that the reform agenda itself has been ambitious and that expectations have been high. This report is based on data collected using a mix of methods including a national survey carried out across the country during the in January and February 2010 as well as interviews with key informants who have knowledge of the various agenda items. This data has helped in comparing major trends since 2008. In addition, the report has used secondary sources of information.

### Findings

3. *Illegal armed groups not politically active:* Between January and March 2010, there was a lull in the activities of illegal armed groups. These groups are neither politically active nor involved in political violence. Calm has returned, therefore, even in areas where the groups were visibly active. The lull in their activities is attributable to several factors, including transformation of some groups into criminal extortion gangs. Others are shedding their negative image in readiness to play political roles in the forthcoming electoral period. An important finding also is that the public do not seek protection from these groups out of preference but out of necessity. The public do not support the existence of these groups and instead prefer protection from the police. This suggests a need to fast track reforms to make the police accountable.
4. *The public supports prosecution of perpetrators of violence:* The public generally supports the prosecution of the leaders of illegally armed groups. They would also prefer to see the perpetrators of post-election violence prosecuted, regardless of their ethnic identity. In this regard, people are generally supportive of the International Criminal Court (ICC) intervention in investigating and, perhaps prosecuting the perpetrators of post-election violence. Unfortunately, the ICC progress in pursuing the Kenya case has inadvertently produced an escalation in threats to potential witnesses. Deaths, threats, and intimidation of potential witnesses have forced many witnesses into hiding locally or abroad. The absence of a functional witness protection programme has made it difficult for some of the witnesses to remain in the country. As noted in the past, a programme under the watch of human rights defenders and the international community/organisations is imperative.
5. *The plight of IDPs slipping off the agenda:* The significance of the plight of the Internally Displaced Persons (IDPs) and continued existence of some in camps continues to recede. Only a few institutions and individuals are attempting to articulate the need to focus on the plight of IDPs as a national agenda. There are still incidents of Government officials forcibly evicting IDPs from some of the camps they occupy. The Government has finalised a draft

IDP policy, which, it is hoped, will help to deliver a lasting solution to the IDP problem and also provide strategies for resettlement. It is important that a rights-based approach is adopted in addressing their concerns. Participation of IDPs, openness and a high sense of accountability should be the guiding principles in resolving their problems. Related to this is the question of healing and reconciliation. Systematic approaches to healing and reconciliation must be identified. Similarly, there is need to fast track enactment and enforcement of laws to support initiatives towards healing and reconciliation. Hate Speech Bill, Freedom of Information, and Equal Opportunities and Equality Bills are relevant in this respect.

6. *Lack of cohesion in the Coalition Government remains a problem:* Disunity within the Coalition Government remains a major sticking point. It affects Government operations and stalls important reforms. For instance, the Cabinet did not meet between early February and mid-March, thereby delaying Cabinet decisions on several issues. Partly responsible for this are the different approaches the two parties pursued in the fight against corruption. It is ironic that the approach to the fight against corruption is also causing disunity within the Coalition. It is being turned into a cause of division along ethnic lines because some leaders hide behind claims of ethnic targeting to defend themselves against allegations of corruption.
7. *The Coalition Government still lacks an effective mechanism for resolving disputes.* Without a clear mechanism for resolving disputes, compounded by the lack of a framework to guide the parties operations within the Coalition, the running of the Government is dependent on ‘gentlemen’s agreements’ and the goodwill of the two Principals. Further, in the absence of structured mechanisms for consultations, partisan interests are increasingly undermining the making of decisions within the Coalition and preventing the promotion of the greater interests of the nation. As noted in the past, informing these differences is the unresolved issue of power sharing. There are still disagreements on who has what power and whether or not power should be or is shared equally. It appears to escape the parties that power sharing is about helping them to unite for the purpose of delivering reforms for the country.
8. *The window for reforms before the referendum has shut – only a new constitution can open opportunities for radical reforms:* a number of important initiatives have been taken with respect to Agenda Item 4. However, there are certain important reforms that should have been undertaken to date but have not. The window of opportunity for undertaking any important reforms before the referendum on a new constitution has now closed. But the draft constitution has a huge potential to open new windows for reforms. There is a need, therefore, to ensure adequate preparedness to immediately undertake reforms after the referendum.
9. *Judicial and police reforms should be a priority:* Judicial and police reforms, whose elaborate framework for implementation is already laid out, should be prioritized in readiness for the 2012 general elections. Priority reform areas include particularly those aspects that directly relate to achieving credible elections, a democratic environment, and accountable institutions. As suggested by the Commission of Inquiry into the Post-Election Violence (CIPEV), insulating the police from political interference and ethnic manipulation as well as establishing judicial organs to fast-track resolution of electoral disputes are priorities.

10. *Electronic voter registration and electronic voting system should be prioritised:* Registration of voters has been going on and opinion polls show that the voter turnout in the referendum for the proposed new constitution is likely to be high. The voter register is being rebuilt afresh. The credibility of the outcome of the referendum will depend on the number of registered voters and the integrity of the voting process. Electronic voter registration will certainly enhance the integrity of the voting system and reduce the costs associated with manual registration and voting. Because of this, IIEC should be supported to transparently establish a framework for an electronic voting system. The Commission should also be supported to implement electronic voter registration in all the constituencies – of course depending on the outcome of the pilot phase. An immediate priority should be intense public education campaigns to ensure that many eligible voters are registered before the referendum. And because a national infrastructure to support e-registration and e-voting is in place, evidenced especially by use of mobile telephony and a broad GSM coverage, the Commission should embark on establishing an electronic system to support e-registration and e-voting for the 2012 General Election and before the interim Commission winds up its activities.
11. *A new constitution will open opportunities for far reaching reforms:* The proposed new constitution has passed some of the most important hurdles. If passed at the referendum and implemented, the proposed constitution has the potential to extensively change the framework of governance and politics in Kenya. It will transform the state and its institutions in a number of important ways. It will open a new window to undertake even more far-reaching changes in the country. There is a need therefore for vigilance over the review by all Kenyans desirous of achieving change to ensure that it remains on track and safe from the sectarian threats that are coalescing around perceived unresolved issues.
12. *Public attention is shifting away from radical reforms to single issues:* The debate on what are considered by some as unresolved issues has distracted attention away from what have been demands for a new constitution, which are to reform the state and its institutions. The country is not debating how this constitutional moment should lead to comprehensive and radical reform of the state, its institutions, and the society itself and enable the country to prevent the reoccurrence of violent conflict. It is an irony that sections of the Christian church appear poised to abandon their traditional position as some of the strongest champions for a new constitution, because of what they consider as contentious issues in the draft constitution.
13. *The opportunity to have a new constitution is a rare one in any society.* Kenya's is a rare opportunity and should not be allowed to go to waste. It is important that strategies be devised to address these challenges and refocus the public debate towards the greater national interest in constitutional reform.
14. *Unity of purpose is a requisite:* The spirit of cooperation and partnership embedded in the National Accord should guide the country in these final stages of the constitutional review. The two Principals will have to show unity of purpose to ensure effective decision-making within the Coalition Government. Cooperation and unity between the two Principals and their allies is required to guide the country after the referendum and into the next General Election.



## INTRODUCTION

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1. This report reviews the implementation of the Kenya National Dialogue and Reconciliation (KNDR) Agreements resulting from mediation by the African Union (AU) Panel of Eminent African Personalities under the chairmanship of Mr Kofi Annan. Under these agreements, the two main parties – the Party of National Unity (PNU) and the Orange Democratic Party (ODM) – agreed on a number of steps to address the crisis that engulfed the country after the disputed December 2007 General Election.
2. The parties committed to undertake a set of actions to achieve the goal of the KNDR: Achieving sustainable peace, stability and justice through rule of law and respect for human rights.
3. Previous reports are found at [www.dialoguekenya.org](http://www.dialoguekenya.org). This report covers the period between January and March 2010.
4. A mix of methods was used to collect data for this report. The research team interviewed various respondents, among them, key informants in government ministries, humanitarian agencies, civil society organisations and the media. The report has used secondary sources of information, including reports by the government, humanitarian agencies as well as the media. The report has cautiously used secondary data, with corroboration through primary data sources informing the extent to which some of the findings are integrated into the review.
5. Finally, the report is based on a national survey. The survey was carried out during the last week of January and first week of February 2010. The sample size for the survey was 2500 people. It was a nation wide survey carried out in all the eight provinces and in sixty-three districts.
6. The review has taken care to remain objective and to let the data set speak for itself, knowing full well that analysis of progress is sensitive to political interests and realities. The research team interviewed various respondents with knowledge on the various agenda items. In addition, a national survey was conducted to assess the prevailing situation.
7. The report is divided into sections corresponding to the agenda items under the KNDR agreement.
  - (a) Section 2: Agenda Item 1 on actions to end violence and restore fundamental rights.
  - (b) Section 3: Agenda Item 2 – Addressing the humanitarian crisis and promoting healing and reconciliation.
  - (c) Section 4 discusses Agenda Item 3 on power sharing, which was agreed upon as a means of ending the political crisis.
  - (d) Section 5 discusses Agenda Item 4 on addressing long-standing issues.
  - (e) Section 6 reiterates some conclusions based on the main findings.

## 2. AGENDA ITEM 1: IMMEDIATE ACTION TO STOP VIOLENCE AND RESTORE FUNDAMENTAL RIGHTS AND LIBERTIES

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### Introduction

8. Agenda 1 of the KNDR Agreements sought to halt the violence and restore fundamental rights and liberties. It outlined measures the police, the public, political leaders and the media were to take to achieve this goal. In addition, Agenda 1 outlined measures to facilitate and protect peaceful assembly as well as impartial and expeditious investigations into the violence. The mediation team also called for the development of a suitable code of conduct for journalists in consultation with the Media Council.
9. This review report outlines the progress made in implementing Agenda 1 in the period between January and March 2010. It draws data from primary and secondary sources through interviews, Focus Group Discussions, and a national survey.

### Key findings

#### ***Summary of findings***

- A committee is appointed to oversee implementation of Police Reforms
- Kenya Communications (Broadcasting) Regulations 2009 come into force
- Government recovers and destroys 2,545 illegal firearms
- There is a lull in militia activity
- Cache of arms found in Narok, and allegations of stockpiling of arms raise concern
- Acrimonious boundary disputes increase as Boundaries' Commission visits districts
- The ICC makes progress on the Kenyan case and threats against witnesses increase
- There is a resurgence of extra-judicial killings; impunity continues
- Freedom of assembly is not fully restored; it is constrained

### ***Halting political violence***

10. The previous report noted that calm returned to all affected areas affected by the violence. This has helped Internally Displaced Persons (IDPs) to return to their residences or near their farms. Significant also is the increasing confidence among citizens that violence will not reoccur.
11. A point to stress during this quarter is that *the absence of political violence has helped people to develop a sense of safety compared to early 2008*. According to the survey carried out in January/February 2010, 58 per cent of respondents feel safer, while 23per cent feel about the same and 19 per cent feel less safe. Overall, however, the proportion of respondents who feel safer has gone up by 6per cent between the August 2009 and the February 2010 surveys, while the percentage of those who feel less safe has declined by 8per cent.

Table 1: Thinking about your safety now compared to six months ago do you feel safer, less safe, or about the same? (Comparison of surveys)

	August '09	January '10
Safer	52%	58%
About the same	20%	23%
Less safe	27%	19%

12. Although these figures are an improvement on those for early 2008 during the political violence, a majority of the population should be feeling safer. That not everyone is feeling safer is a cause of concern. It is testimony that the conditions giving rise to insecurity are yet to be fully addressed.
13. *Insecurity in the slums of Nairobi leads to community self-defence groups:* Past reports highlighted increasing insecurity in some parts of the country and urban areas in particular. Findings now show that poor security and ineffectiveness of the police has led to communities in the slums forming *self-defence groups*. In Kibera, for instance, recurrent inter-ethnic violence has motivated different ethnic groups to form 'self defence units' to protect their members. They resort to these groups because police take a long time to investigate and rarely secure convictions.
14. *Communities in the poor slums are highly ethnicised:* The findings also show that local communities in the slums are so ethnicised that inter-personal quarrels usually transform into conflict between ethnic groups.<sup>2</sup> The community self-defence units, however, play a role in mediating these disputes. This is not to suggest, however, that people have confidence in these groups. They only turn to them as a last resort. As noted in the past reports, slow progress in healing and reconciliation accounts for heightened acrimony between groups.
15. *Claims of stock piling of arms in Rift Valley are a major concern:* Local discourses and media reports about stock piling of arms by rival communities in Rift Valley continue to draw attention. In December 2009 and February 2010, a large cache of assorted weapons and over 130,000 rounds of ammunition were discovered in Narok town in the Rift Valley, the province most affected by the post-election violence.<sup>3</sup> Some of the ammunitions and weapons were reportedly traced to the Government armoury and Government bullet factory in Eldoret. This is an issue of concern because it points to possible complicity of some officials in the matter.<sup>4</sup> The Government has begun investigations on some officials involved in gun-running cartels and some have been discipline while others including those implicated in the cache of arm are awaiting prosecution.
16. *Arms and transition politics are an issue of concern:* The rounds of ammunition uncovered in this instance suggest that the intended use was not merely criminal activities. Coming at a time when the country is in the grip of transition politics, and without resolving all the circumstances that contributed to the post-2007 election violence context, allegations of stockpiling of arms are worrisome. These developments should be keenly watched as the country approaches the election period and transition. Transition politics concern loss of political power and influence for some, and acquisition of power and influence by others. The precedents in transition politics in Kenya make this an issue of concern. Illegal militia

<sup>2</sup> Interview with a member of Community Policing in Kibera, 18 March, 2010

<sup>3</sup> Interview with a senior government official, 23 Feb 2010; media reports 19 Feb 2010

<sup>4</sup> Interview with a security expert in Nairobi, 7 March 2010

and even formal security can be constituted and equipped to help the politics along.<sup>5</sup> The Commission of Inquiry into the Post-Election Violence (Waki Commission) identified perceptions of politicisation of the Administration Police as an issue requiring attention through police sector reforms.

17. *Disarmament and recovery of illegal weapons continues:* The Government has stepped up the disarmament programme. Over the past year, the Government has recovered 2,545 illegal weapons from civilians through an extended amnesty and use of force.<sup>6</sup> These firearms were destroyed on 23 March 2010 at a ceremony to mark the anniversary of the Nairobi Declaration on Small Arms and Light Weapons. However, lack of an effective policy to address proliferation of arms constrains progress in this respect. Consequently, special operations to recover firearms have been characterised by claims of human rights violations, such as rape, by security officers.<sup>7</sup>

### **Cross border conflicts**

18. *Resource-based conflicts on decline:* Resource based conflicts had reduced during the period between January and March. However, insecurity along the Sudan-/Ethiopia border with Kenya continues. There are repeated incursions by the Toposa and Merille herdsmen from Sudan and Ethiopia respectively.<sup>8</sup> Although the Kenya military and administration police have set up bases in the affected areas, tensions remain high.<sup>9</sup> The IC/GLR Peace and Security project to simultaneously disarm communities and support their livelihoods is yet to be successfully rolled out successfully in the five neighbouring countries.<sup>10</sup> Critical at this point is to reinforce inter-state peace building mechanisms because disarmament alone is not a sustainable solution.
19. *Somalia conflict a growing threat to security and economy:* Cross border incursion into North Eastern Province by groups associated with Al Shabaab militia from Somalia is a growing threat to security. Incursions cause fear and uncertainty in the province due to the risk of internationalisation of the Somalia conflict.<sup>11</sup> There were reports in March that forces allied to the transitional government of Somalia were being trained in Kenya.<sup>12</sup> Media reports observe that Kenyan nationals and refugees from the Dadaab Refugee Camp were recruited and trained to take part in the Somali conflict.<sup>13</sup>
20. The large number of Somalia refugees in Kenya and their possible connection to conflicts at home raises the need to carefully monitor the conflict in Somalia and its impact on security in Kenya. Also there are media reports have been published on how the Somalia conflict could be impacting on the economy through investment of money from conflict and piracy-related activities in Kenya's property markets.<sup>14</sup> This is an issue that requires close

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<sup>5</sup> In the late 1970s, some influential politicians and the police leadership constituted and equipped a 'private army' whose nickname was 'Ngoroko' based in Nakuru. The aim was to use the force to accede to power. Joseph Karimi and Philip Ochieng (1980), *The Kenyatta Succession*, Nairobi: Transafrica Book Distributor. Pp.109 – 110.

<sup>6</sup> Interview with Kenya National Focal Point on Small Arms, 23 Feb 2010

<sup>7</sup> Interview with Kenya Human Rights Commission, 6 March, 2010

<sup>8</sup> 'Two soldiers killed at Kenya-Sudan Border' *Daily Nation*, 15 Feb 2010

<sup>9</sup> Interview with a senior government official, 24 March 2010

<sup>10</sup> Interview with NGO staff working on security issues in the Horn of Africa, 3 March 2010

<sup>11</sup> Interview with an official from the Ministry of Foreign Affairs, 25 Feb 2010

<sup>12</sup> Report of the UN Monitoring Group on Somalia pursuant to Security Council Resolution 1853 (2008), released 10 March 2010, pp 26-27; 55-57

<sup>13</sup> 'Kenya Trains Somali Youths' *The Star*, 19 March 2010; 'Kenya Stuck with Somali Mercenaries' *The Star*

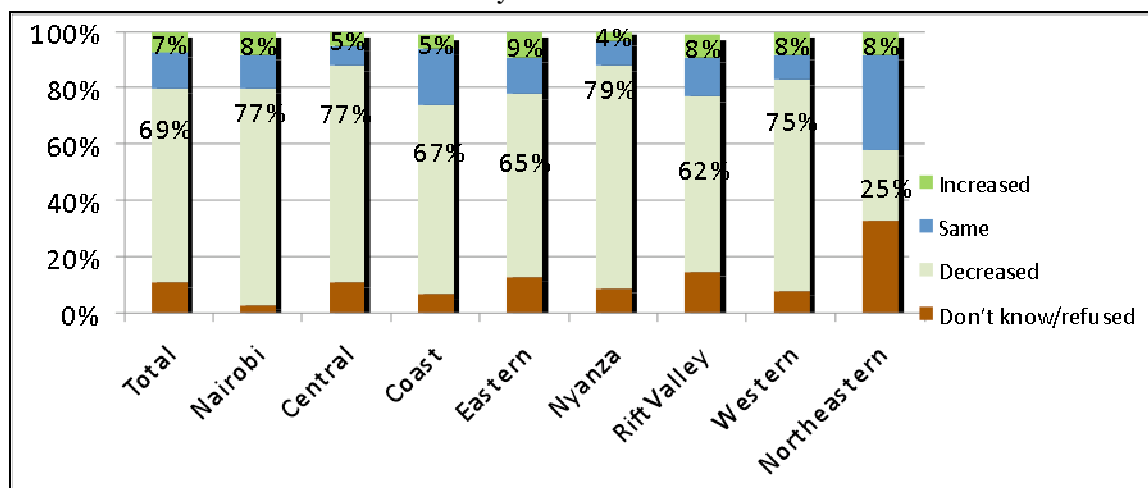
<sup>14</sup> American Chronicle, "Somali pirates behind Kenya property boom?" Tuesday, April 20, 2010. <http://www.americanchronicle.com/articles/printfriendly/134>; Propertywire.com/new/Africa/ "Somali

monitoring. The country is moving towards elections and such money could easily find its way into politics.

### Demobilisation and disbandment of illegally armed groups

21. *Violence by illegal groups has declined – but criminal activities persist:* Previous reports have shown that it has been difficult to formulate and implement a clear strategy to deal with illegal groups because they hold powerful politicians and the business community to ransom. These groups have thus difficult for them to fight the illegal groups. This has made it easy for these groups to engage in social banditry without fear. Findings from the survey and interviews conducted across the country show that new groups have emerged in some of the major towns including Nakuru, Kisumu and Mombasa. However, although crimes by these groups have increased, violence from local armed groups has declined; there has been a lull in their activities. Across the country many people feel that violence by these groups has decreased.

Figure 1: In the past six months, do you think violence from local armed groups has increased, decreased, or stayed about the same?



22. Interviews in Nairobi show that in addition to older and bigger groups such as Mungiki and Siafu, new groups such as 'Mau Mau' and 'Sub Area' have emerged. According to survey findings, 38 per cent of respondents think these groups come to 'provide security'. The survey also identified the following new groups in four provinces:

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pirates behind real estate boom in Kenya, it is claimed". Monday, 04 January 2010; The Associated Press, "Somali pirates investing in Kenya property? Little Mogadishu' neighborhood of Nairobi sees new investment". Friday, January 1, 2010.

Table 2: New groups in four provinces

<b>Rift Valley</b>	<b>Central</b>	<b>Western</b>	<b>Nyanza</b>
Akirim	Mahigani	Home Guards	Saba Saba
Jerie	Youth Forum	Nyumba Kumi	Ocampo
Alkotela	Sub-Area	Kamisinga	
Rebor		Mundere Lobby	
Nyong'ara			
Kwathela			

23. *Leaders of illegally armed groups generating funds for 2012:* Interviews in Nairobi slums, Central Rift Valley and Central Province reveal that some leaders of these illegal groups intend to seek elective positions and are saving and investing the proceeds from extortion to raise funds for political campaigns in 2012. Indeed, some critics see the sudden conversion of members of some of these groups into Christianity as a strategy of legitimizing their groups ahead of 2012. Moreover, the conversion has not stopped members from extorting money from different various businesses. If anything, they have increased the amounts charged, as shown in Table 3 below:

Table 3: Comparative extortion rates in eastern Nairobi for 2009/10 (in ksh.)

Zone controlled	Nissan Matatu (daily)		Move House (once)	
	<b>2009</b>	<b>2010</b>	<b>2009</b>	<b>2010</b>
Kayole	300	500	400	650
Mathare	400	500	500	550
Dandora	500	600	400	600
Huruma (Thaai)	300	500	200	600

Source: Interviews in Eastlands, March 2010

24. A majority of Kenyans give information about insecurity to the police and local councillors. Not many appear to seek help from local armed groups. Again this reinforces the need for fundamental police reforms.

Table 4: Please tell me if members of your community have done any of the following to help combat insecurity in your community in the past six months.... (percent answering "Yes")

	<b>December '08</b>	<b>August '09</b>	<b>February '10</b>
Take the law into their own hands	20%	33%	33%
Patrol streets or form neighbourhood watches	28%	31%	28%
Give information to the police	46%	66%	68%
Give information to local councillors	27%	42%	46%
Seek help from local armed groups	14%	17%	12%

25. The Government has initiated the witness protection programme and introduced



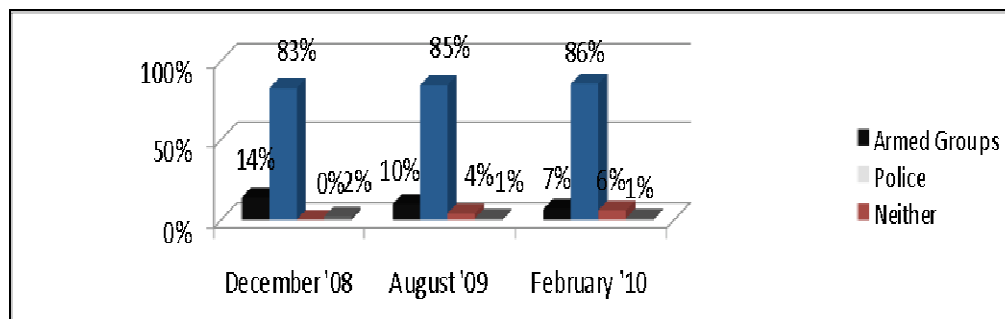
amendments to the legislation supporting the programme to make it functional by April 2010.<sup>15</sup> However, CSOs have raised concerns over the proposed amendments. They fault the narrow definition of ‘witness’ and argue that the programme itself lacks structural and statutory authority.<sup>16</sup>

26. *Threats against witnesses continue following progress by the ICC prosecutor:* As reported in the last review period, fear of prosecution has led to increased intimidation of potential witnesses and human rights defenders. Civil society organisations have reported the deaths of two potential witnesses, continuing threats and intimidation of scores of others who have gone into hiding or fled into exile.<sup>17</sup> Even though incidents of witness intimidation are well noted and those involved known, the government has not arrested and prosecuted anyone. Because of this, confidence of witnesses in a Government-run witness protection programme has waned.
27. *Some politicians are manipulating victims:* Some victims complain that senior and powerful politicians are holding meetings with them and urging them not to participate in either the TJRC or any future investigative process including the ICC.<sup>18</sup> Victims who have been approached claim the politicians have promised them parcels of land and scholarships for their children if they decide not to give evidence. They also argue that these politicians regularly give monetary incentives to IDP leaders to influence them to prevail upon IDPs not to give any evidence. These are issues of concern because these interventions can prevent witnesses from giving evidence or undermine the credibility of the evidence itself.

### Enhancing security and protection of the population

28. *Confidence in police is on the rise compared to 2008:* While illegally armed groups have formed for community protection, the survey indicates that Kenyans prefer to be protected by the police. That overwhelming majorities attribute the responsibility of security provision to the police rather than local armed groups (militias) corroborates the need to urgently undertake fundamental police reforms. More citizens would have confidence in the police if the force had been reformed. Unfortunately, two years on, reforms are yet to be implemented.

Figure 2: Do you think it is more important for local armed groups to protect their communities, or is it more important for the police to protect communities



29. *Absence of fundamental police reforms is an issue of concern.* There is concern that no fundamental changes have occurred within the police force; there is no significant policy change and no significant institutional reforms have taken place. An Implementation

<sup>15</sup> Interview with a senior government official, 24 March 2010

<sup>16</sup> KPTJ submission to the National Dialogue and Reconciliation Team, 25 March 2010

<sup>17</sup> Interview with staff of a national human rights institution, 19 March 2010

<sup>18</sup> Interviews with categories of victims in the Rift Valley and Nairobi, Feb-March 2010

Committee was appointed in February 2010 to oversee and fast-track reform implementation but the Committee is yet to begin substantive work.<sup>19</sup> Commenting on the lack of genuine support for fundamental reforms, some police officers note that if violence similar to that witnessed in the post-election violence in 2007 were to reoccur, the police would respond exactly as they did then: *‘Why would they react differently today? Nothing has changed to stop police from behaving the way they did. Paying allowances that are overdue is not reforms... If they give new uniform, is that reform? Transfer of officers from one station to another also is not reforms...’* Some of the respondents said reform is about investing resources in improving police capacity to carry out investigations and enforce the law. Without resources to build police capacity, nothing is going to change.<sup>20</sup>

### **Restoration of fundamental rights and liberties**

30. *Extra-judicial killings and excessive use of force in practice sometimes:* The scepticism about fundamental police reforms is reflected in the resurgence of extra-judicial killings. In March 2010, administration police in a Nairobi suburb executed seven taxi operators. Demonstrators protesting the execution were violently dispersed. This incident indicates the pervasiveness of impunity and lack of reforms within the police force. Indeed there are reports that police are still using live bullets to disperse demonstrators. The execution of members of proscribed groups also is reportedly taking place.<sup>21</sup>
31. *Freedom of the media likely to be restricted through new laws:* Kenya has some of the most liberal media in the region. It is also highly pluralised if not sufficiently diverse. Over the past few years, the Government has introduced a number of proposals in consultation with the Communications Commission of Kenya in order to implement the Kenya Communications Act, 1998 which was amended in 2008. These include the Kenya Communications (Radio Communications and Frequency) Regulations, 2009, and the Kenya Communications (Broadcasting) Regulations 2009.
32. While these are positive in terms of improving competition, the new rules have been widely viewed as restrictive and likely to gag the media. They also contain gaps that could lead to political manipulation of the media.<sup>22</sup> For example the Minister in charge has powers to search and seize broadcast equipment and the right to intercept and disclose telephone calls, emails and letters. The Act also gives a government-controlled Communications Commission of Kenya the power to license and regulate broadcasting services and to prescribe the nature and content of media broadcasts. Moreover, the penalties for press offences - fines and imprisonment – provided by the Act could lead to unjustified restriction of the right to freedom of expression.<sup>23</sup>
33. *Self-regulation is critical:* Although there have been concerns about the restrictive potential of these laws, there are also concerns about effectiveness of self-regulation by the media. Coordination between the Ministry, the Media Council, as well as new bodies such as the National Cohesion and Integration Commission should be structured in earnest to develop strategies for addressing issues around media, hate speech and negative ethnicity. This coordination is also critical for the purpose of ensuring that media laws adhere to Article 19

<sup>19</sup> Interview with a senior government official, 23 March 2010

<sup>20</sup> Interview with senior officials, 23 Feb 2010

<sup>21</sup> Interview with National Commission on Human Rights, 20 March 2010; KPTJ submission, op cit

<sup>22</sup> Interview with member of the Editors Guild, 22 Feb 2010; interview with staff of Article 19 in Nairobi, Feb 2010

<sup>23</sup> Article 19, *Article 19’s Submission to the UN Universal Periodic Review for the Republic of Kenya*; Report for consideration at the eight session of the UPR Working Group 3, 3-14 May 2010.



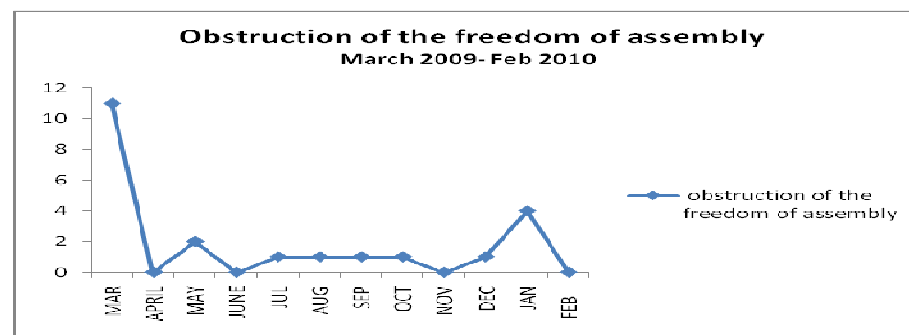
of the UN Convention on Civil and Political Rights<sup>24</sup> because some of the media laws and others such as the Official Secrets Act, the Public Order Act, the Defamation Act and the Preservation of Public Security Act, restrict or threaten the freedom of expression.<sup>25</sup>

34. *Harassment of journalists has reduced - compared to 2008 – but self censorship continues:* Harassment of journalists in this period has been on the decline compared to early 2008. However, there were several incidents in which the police harassed journalists and prevented them from accessing public functions. These forms of harassment and intimidation lead to self-censorship among journalists.<sup>26</sup> The legislation on defamation, for instance, suppresses freedom of expression as journalists fear punitive awards for libel by the courts. Past incidents of harassment and fears of defamation offences suppress these freedoms because of the fear of libel charges under laws relating to defamation.<sup>27</sup> In addition to self-censorship, the report by Article 19 observes that journalists investigating corruption are sometimes threatened and attempts are made to bribe them. This also contributes to self-censorship.

### Freedom of Assembly

35. *Freedom of Assembly yet to be fully restored to the pre-2007 levels:* Past reports showed that freedom of assembly has not been restored to the status that prevailed before the 2007 general elections. The police violently dispersed protestors, including those by IDPs demanding attention to their plight and support. Police arrest and charge people with taking part in an illegal assembly. The figure below shows the main trends in incidents that violated freedom of assembly between March 2009 and February 2010. The table shows that March 2009 had more incidents during the past 12 months while the cases in March 2010 included dispersal of those demonstrating against evictions from the Mau Forest Complex. These included violent dispersal of demonstration against extra-judicial killings. Others included disruption of protests by social movement, Bunge La Mwananchi. The incidents noted in January 2010 include dispersal of demonstrations against the arrest and extradition of a Muslim cleric.

Figure 3: Obstruction of the freedom of assembly



<sup>24</sup> The UN Convention on Civil and Political Rights emphasizes that ‘everyone shall have the right to freedom of expression and the right to seek, receive and impart information and ideas of all kinds... in any media. Although the rights are subject to restrictions, these restrictions are only necessary for respect and/or reputation of others...and protection of national security, among others.

<sup>25</sup> Article 19’s *Submission to the UN*, op cit, p. 3

<sup>26</sup> Interviews with the Editors Guild, March 2010;

<sup>27</sup> Though cases of libel are rare and isolated, the existence of such a law suppresses freedom of expression. Interview with editor, 2 March 2010; see also ‘From libel to jail terms: press liberty is on a roll’ *Daily Nation* 3May 2007. Powerful politicians have in the past been awarded huge sums in damages for libel.

36. *Discriminatory application of restrictions is common:* The restriction on the freedom of assembly does not apply uniformly. Police allow demonstrations in support of government positions or of senior politicians in Government.<sup>28</sup> They forcibly and violently disperse those calling attention to failures of the Government or demanding services. During some of these incidents police have used live bullets.<sup>29</sup> Police also ban rallies they consider politically sensitive. And even though the amended Public Order Act requires them to simply be informed about intention to hold a rally three days in advance, police sometimes refuse to give timely acknowledgement of receipt of such legal notices.
37. Interviews and survey data indicates that the Government largely respects press freedom but restricts freedom of assembly. According to the February survey, positive perceptions of the Government's respect for Kenyans' basic human and constitutional rights have increased since December 2008.

Table 5: Public perception of the Government's respect of basic human and constitutional rights

	December '08			August '09			January '10		
	Respects	Does not respect	Don't know	Respects	Does not respect	Don't know	Respects	Does not respect	Don't know
The right to freely hold public meetings	34%	61%	5%	59%	35%	6%	54%	43%	3%
Freedom of speech	38%	59%	4%	66%	28%	5%	61%	36%	3%
Freedom of the press	20%	76%	4%	63%	31%	6%	51%	44%	5%
Sanctity of human life <sup>30</sup>	--	--	--	48%	43%	9%	49%	46%	5%
Right to demonstrate <sup>31</sup>	--	--	--	--	--	--	29%	65%	6%

38. While more citizens thought the Government respects the freedom of the press in August 2009 (66 per cent) compared to December 2008 (20 per cent), that number has dropped down to 51 per cent in January 2010. The February 2010 survey was the first to ask whether people think the Government respects the right to demonstrate, following confrontations

<sup>28</sup> During the month of February 2010 police allowed civil society groups to demonstrate in support of the Prime Minister's demand to have two Ministers step aside to allow for completion of corruption investigations. The same group was prevented from holding public demonstrations organized during the commemoration of two civil society people executed by police in 2009. By law, the amended Public Order Act, police do not have the power to ban peaceful assemblies..

<sup>29</sup> Interview with member of a social movement in Nairobi, 4 March 2010; members of the group have been arbitrarily arrested and fined for holding public discussion forums or taking part in demonstrations

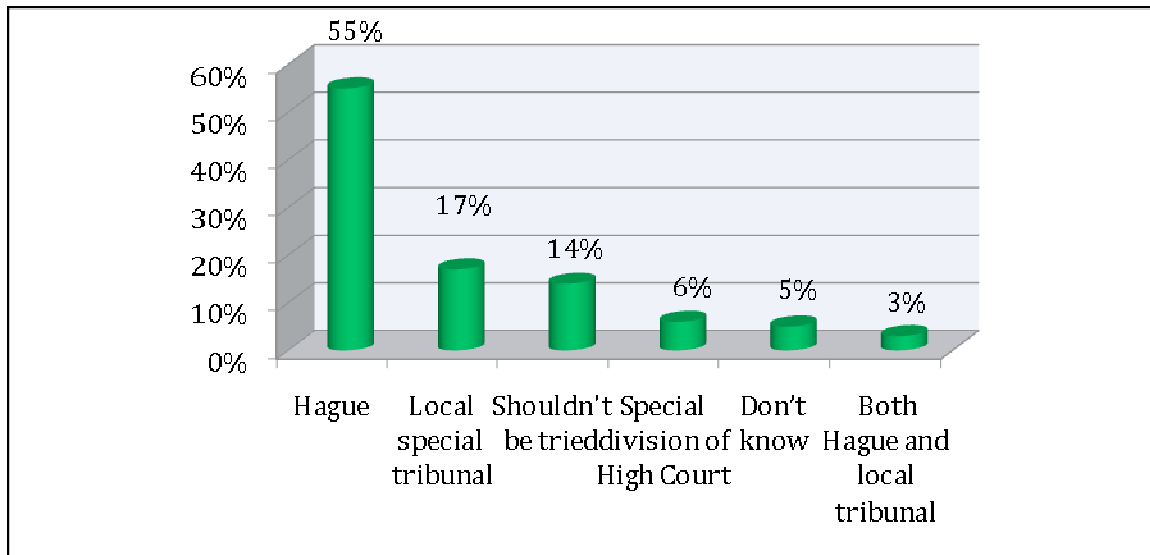
<sup>30</sup> Asked only in August 2009 and January 2010 survey.

<sup>31</sup> Asked only in January 2010 survey.

between police and protestors in Nairobi and Mombasa. Only 29 per cent of Kenyans think the Government respects the right to demonstrate.

39. Despite lack of sufficient protection from the Government for the post-election violence witnesses, the survey findings show that 55% of respondents support prosecution of post-election violence perpetrators through The Hague rather than in Kenya (23%).

Figure 4: Should those individuals responsible for post-election violence be tried through a Special Division of the High Court, a local Special Tribunal, or the Hague?



40. About 78 per cent of those who prefer The Hague would like prosecution to proceed even if the Government does not guarantee protection of witnesses. Only 19 per cent don't think the prosecution should go forward while 3 per cent do not know. This trend by the public to prefer the Hague option to try suspects of PEV has not changed since August 2009.

Table 6: Should those individuals responsible for post-election violence be tried through a special division of the high court, a local special tribunal, or the Hague? (Comparison of surveys)

	August 2009	January 2010
Hague	58%	55%
Local special tribunal	14%	17%
Shouldn't be tried	12%	14%
Special division of High Court	7%	6%
Both Hague and local tribunal	--	3%
Don't know	9%	5%

## CONCLUSIONS

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41. The lull in the activities of illegally armed groups may not mean they groups have been disbanded and disarmed. The groups may not politically active currently, but some are active as extortion gangs, while others are shedding their negative image and aligning with political actors in readiness to contest for political posts in 2012. The Government does not have a coherent strategy to deal with these groups, which are also collecting illegal taxes and protection money from the poor. Senior Government officials' covert and overt engagement with leaders of such groups sends mixed signals about the Government position on ethnic militia.
42. Many Kenyans support the prosecution of leaders of illegal groups and perpetrators of the post election violence. These findings suggest that prosecution is critical for the purpose of ending impunity. The findings also indicate the need expedite fundamental police reforms and accountability processes.
43. There is an improvement in efforts to fully restore fundamental freedoms and rights; Freedom of Assembly is constrained. Compared to 2008 during the post-election violence, media freedom has considerably improved. Incidents of harassment of journalists, however, tend to lead to self-censorship and thus suppression of this freedom.

### 3. AGENDA ITEM 2: ADDRESSING THE HUMANITARIAN CRISIS, PROMOTING NATIONAL HEALING AND RECONCILIATION

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#### Introduction

44. Agenda Item 2 of the KNDR focused on addressing the humanitarian crisis and promoting national healing and reconciliation. The KNDR agreement emphasised the need for the parties to encourage and assist displaced persons to return to their homes or move to new areas, and to lead the process of national healing, reconciliation and reconstruction.
45. Review of progress made in the rehabilitation of IDPs has shown that while the Government's resettlement programme (Operation Rudi Nyumbani) ended in December 2008, thousands of IDPs remain in camps and other settlements away from their former homes. Previous reports also noted that national level political conflicts e.g. over corruption and eviction from forest areas tend to trickle down, rekindling ethnic antagonisms at the local level. This pattern of peace punctuated by threats has frustrated genuine reconciliation efforts. The pattern has also ethnicised policy and reform debates. Politicians are increasingly interpreting policies from an ethnic view point rather than from a national perspective.
46. This section reviews progress made in resettlement efforts and in promoting healing and reconciliation. It covers the period between January and March 2010.

#### Key findings

##### *Summary of findings*

- National Policy on IDPs formulated
- IDPs demand to be resettled before rather than register as voters in host communities
- Resettlement programme stalls for lack of funds
- Flooding in arid and semi arid lands displaces hundreds of pastoralists
- Litigation against the TJRC draws mixed reactions from civil society and victims of past injustices

#### Resettlement of IDPs

47. *Draft IDP Policy in place:* Past reports indicated that there was no IDP policy in place to guide resettlement and address the plight of IDPs. During this period, the Ministry of Justice in conjunction with the Ministry of Special Programmes and the Protection Cluster have completed drafting of a National Policy on IDPs. The draft policy, which was drafted by a member of staff seconded from the office of the UN Representative on the Human Rights of IDPs, is yet to be presented to the Cabinet.
48. *Some IDPs still in camps:* Previous reports noted that by the end of October 2009, the Government had closed all formal camps. It has also been noted that the closure did not translate into an end to displacement because thousands of IDPs were unable or unwilling to return to their former homes either because they were landless and therefore had nowhere to return to, or because persistent insecurity and fear prevented effective return. Statistics from the Ministry of Special Programme as of 3 March 2010 reveal that 3,714 households

remain in 25 transit camps in Molo (12), Uasin Gishu<sup>32</sup> (5) and Trans Nzoia West (8).

49. *Government to buy land for IDPs:* The March 2010 IDP Status Brief notes that the Government has set aside sh. 1.4 billion for the purchase of 14, 600 acres of land on which to resettle IDPs. Each IDP household will receive 2.25 acres in a settlement designed as an eco-village. So far, a total of 705 families have been relocated from Mawingu camp in Nyandarua to Nakuru, Nakuru North and Molo districts. The Government has identified other farms where more IDPs are to be resettled. IDPs to settle in these have also been identified. These farms include Giwa farm (444 families), Managu farm (56) and Mau Summit (141), all in the Rift Valley. At Giwa farm, the Government has provided building materials and construction has begun.<sup>33</sup> More farms are being identified and purchased to settle the balance of 6,802 targeted households. Only those who had pooled resources and bought their pieces of land will benefit from this programme. This has caused anger and resentment amongst other IDPs, particularly those who have not received any funds.
50. *Assistance bypassing those in transit camps:* Interviews in transit camps and survey findings reveal that, despite efforts to resettle IDPs, those who are in transit camps after the post-election violence are likely to remain displaced for a long time because of landlessness. They are not targeted to receive land. At the same time, the Government is not allocating land to new self-helps formed for the purpose of buying land.<sup>34</sup>
51. *IDPs are continuously expectant and anxious:* The process of identifying, procuring, surveying and subdividing the land is long, and delays have caused concerns amongst IDPs about whether they will indeed receive the land.<sup>35</sup> The scepticism is reinforced by allegations of corruption by both government officials and representatives or leaders of IDPs.<sup>36</sup> However, even as the government rolls out the distribution of land to IDPs, some IDPs are raising funds to purchase land on their own. For instance, in February, IDPs raised ksh. 500,000 towards the purchase of a 69-acre farm in Kinangop.<sup>37</sup>
52. *Not all IDPs have received start up and reconstruction funds:* Statistics from the Ministry of Special Programs show that about 95 per cent of targeted IDPs have received Ksh. 10,000 to restart their basic livelihoods. However, about half (51 per cent) have not received the ksh. 25,000 promised to reconstruct their homes.<sup>38</sup> During this period, no further funds for reconstruction were distributed to IDPs. The decision to purchase land for IDPs led to the transfer of some funds of the Ministry of Special Programme's annual budgetary allocation to the Ministry of Lands.<sup>39</sup> This reportedly made it difficult for the Ministry of Special Programmes to disburse funds to IDPs.
53. *The perception of Government's performance in resettling IDPs is improving:* Over the last two years, there have been variations in the public's perception of the Government's performance in resettling IDPs. Whereas in December 2008, 43 per cent of the public said they were very or somewhat satisfied with the Government's efforts, this dropped to 37 per

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<sup>32</sup> New Wareng District

<sup>33</sup> Interview with Resettlement Officer at the Ministry of Special Programs, 14 March 2010

<sup>34</sup> Interview with integrated IDPs in Nakuru town, Feb/March 2010; interview with official at the Ministry of Special Programmes

<sup>35</sup> Interviews in Nyandarua and Nakuru among IDPs at camps for the self-help groups, Feb 2010

<sup>36</sup> Ibid

<sup>37</sup> Interview with member of the Kenya National IDP Network 11 March 2010; see also 'IDPs raise sh. 500,000 to buy land in Kinangop' *The Star* 8 Feb 2010

<sup>38</sup> Ministry of Special Programs, *IDP Status Briefs* January – March 2010

<sup>39</sup> Interview with senior official, Ministry of Special Programmes, March 2010

cent in August 2009. However, this has improved to 51 per cent in the latest survey – February 2010. Accounting for this variation may be the fact that IDPs problems are no longer profiled and therefore not many people are aware about the current situation of IDPs. At the same time, news of the government resettling some of the IDPs is seen as a positive approach to their plight.

54. *Claims of corruption yet to be addressed:* Claims of corruption and embezzlement of humanitarian funds cloud some of these accomplishments particularly because no one has been successfully prosecuted.<sup>40</sup> The Ministry of Internal Security conducted an internal audit of the disbursement of funds. The audit revealed the loss of about Ksh. 180m.<sup>41</sup> In December 2009, the National Commission on Human Rights (KNCHR) and the Kenya Human Rights Commission (KHRC) released separate reports also showing cases of misappropriation of resettlement funds.<sup>42</sup> The reports have generated pressure for those involved to be prosecuted. Parliament itself has asked that the implicated individuals be prosecuted.<sup>43</sup> Investigations are going on but no one has been successfully prosecuted.
55. *The public is sensitive to and concerned about the plight of IDPs:* Survey findings reveal that the general public remains sensitive to the problems facing IDPs. When asked what they think is the most important way that the Government can address the problem of IDPs, a majority of Kenyans said a resettlement scheme of some kind is necessary. But IDPs themselves appear unwilling to return to the flashpoints of violence, preferring to be resettled elsewhere.

#### **Access to relief and assistance funds**

56. By March 2010, the Ministry of Special Programmes had disbursed ksh 10,000 to a total of 157, 598 IDP households to restart their lives. Rift Valley has had the largest share (69.84 per cent) of the funds because it is home to a majority of IDPs. Nyanza province is second at 11.98 percent. The table 7 below shows distribution of funds by the Ministry.

Table 7: Distribution of IDP funds by Province

	Province	Start up funds (ksh. 10,000)	% of total
1	Rift Valley	1100706000	69.84
2	Coast	11,580,000	0.73
3	Eastern	3,264,000	0.21
4	Central	101,030,000	6.41
5	Nairobi	37,940,000	2.41
6	Western	132,672,000	8.42
7	Nyanza	188,788,000	11.98
	Total	1,575,980,000	100.00

Source: Ministry of Special Programmes, March 2010

57. *The Ministry and other agencies are supporting recovery:* The Ministry of Special

<sup>40</sup> Interviews in Nairobi, Central and parts of the Rift Valley, February 2010

<sup>41</sup> Interview with a senior Government official, 16 Feb 2010

<sup>42</sup> KNCHR press release 'Outcome of KNCHR assessment of GoK Resettlement Programme of IDPs and Corruption Allegations' 2 Dec 2009; KHRC, *Out in the Cold*, Dec 2009

<sup>43</sup> Also 'MPs demand audit of sh.2b IDP cash' *The Standard*, Feb 1, 2010; 'Probe on for theft of millions of IDP cash' *Daily Nation*, 9 Feb 2010



Programmes in conjunction with various humanitarian organisations has continued to provide shelter and livelihoods recovery support to IDPs in the Rift Valley. In this regard, 38,145 households or 48.7 per cent of the targeted households have received Ksh. 25,000 for reconstruction of houses.<sup>44</sup>

58. *Farm restoration prioritised:* The Government has also borrowed Ksh. 1.9 billion shillings from the African Development Bank to support livelihoods recovery projects and peace and reconciliation initiatives. Projects under the Restoration of Farm Infrastructure and Rural Livelihoods are to be implemented in six districts affected by the post-election violence.<sup>45</sup> Beneficiaries receive fertilisers and farm inputs. This government project will complement similar projects being implemented by the International Organisation for Migration (IOM) and civil society groups in the same regions.
59. *Beneficiaries' distress and competing needs challenges reconstruction efforts:* Some beneficiaries have diverted the money meant for shelter reconstruction or purchase of household items to other uses. The money has been used in different ways such as entertainment, paying school fees, as seed capital to start small businesses, to pay rent and even buy land for the landless.<sup>46</sup>

### **New threats adding to numbers of IDPs**

60. *New displacements from implementation of policies:* The eviction of persons who had illegally encroached on the Mau Forest in January and February 2010 caused encampment of about 2000 people whose homes were destroyed by forest guards. Although some experts argued that these were not IDPs in the conventional sense,<sup>47</sup> their encampment created genuine humanitarian needs. The eviction of land owners with genuine legal titles has been stayed awaiting a policy decision on whether or not to compensate them. A survey to determine the boundaries of the forest is yet to be completed.<sup>48</sup>
61. *Floods compounding the humanitarian crisis:* Heavy rains at the onset of the long rains season (March-June) have caused flooding in different parts of the country. By the end of the first week of March 2010, the Kenya Red Cross Society reported that over 8,360 people in Northern Kenya, parts of Nyanza and parts of Rift Valley had been displaced or affected by the floods in different ways. The drought that preceded the rains had also caused conflicts over resources. These conflicts displaced many people in these areas. Unfortunately, the focus of the resettlement programme is on the post-election violence case load. New IDPs are left without assistance.
62. *Problems facing the IDPs are far from over:* These findings show that the humanitarian problem is yet to be resolved. The Government made progress in resettling some of the IDPs but some are still in transit camps because of insecurity and/or they did not receive start up funds and shelter reconstruction funds. In this regard, it is important that the government disburses funds to the remaining households. It is also significant that an IDP policy has been formulated and is awaiting presentation to the Cabinet. Approval and implementation should be expedited so as to resolve the IDP problem. Further, there is need also to begin assisting the new case loads – those displaced by natural factors as well as conflicts. Though

<sup>44</sup> Interview with Ministry of Special Programs, op cit

<sup>45</sup> Ibid; see also 'IDPs benefit from sh. 1.9 billion farm input' The Star, 12 Feb, 2010

<sup>46</sup> Interviews with IDPs in Nakuru and Molo, Feb 2010

<sup>47</sup> Email discussion with former UNHCR Protection Officer, Jan 2010

<sup>48</sup> Telephone interview with member of the Mau Forest coordinating secretariat, 15 March, 2010; see also 'Mau evictions to continue after boundary survey' The Standard, 9 Feb 2010



not part of the post-election caseloads, respect and promotion of human dignity is the essence of humanity; humanitarian assistance should not bypass these groups.

### Promoting healing and reconciliation

63. *Peace building initiatives taking place:* The government and civil society organisations have continued to support peace-building initiatives at the community level. In particular, district peace committees have convened meetings at the local level to discuss peace and security issues. However, the number of meetings has reduced due to lack of funds to facilitate transport and other logistical inputs needed to convene meetings.<sup>49</sup>
64. *Discrimination on ethnic basis decreased:* The survey findings on healing and reconciliation reveal two main trends. First, is the low proportion of respondents reporting discrimination in August 2009 (11 per cent) and February 2010 (14 per cent). The second is the significant decline –by 21 points– of reported discrimination between the first baseline survey in December 2008 and the August 2009 follow-up. However results from the latest round in February 2010 show a slight up tick of 4 per cent. This is probably attributable to the trickle-down effect of national level tensions and political conflicts.

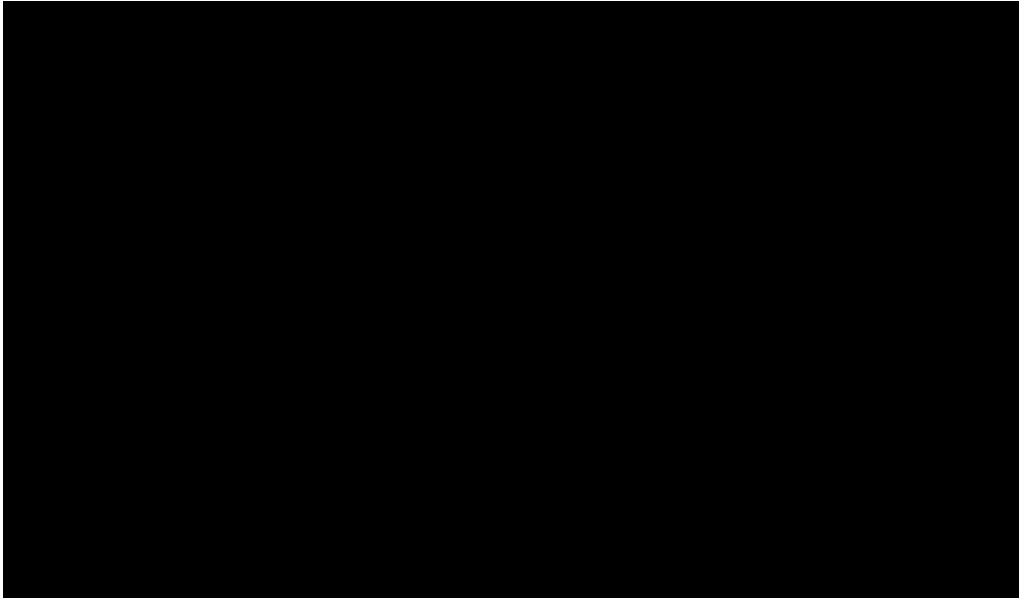
Table 8: Since just after the 2007 general elections, has anybody treated you unfairly because of your ethnicity?

	December '08	August '09	February '10
<b>Yes</b>	32%	11%	14%
<b>No</b>	68%	88%	85%
<b>Don't know</b>	0%	1%	1%

65. *Communities gradually accepting others:* During the post-election period, ethnic divisions deepened. Communities were suspicious of others – they were not getting along. From December 2008, there is a gradual acceptance of one another in that 23 per cent reported in December 2008 that their groups had problems getting along with other ethnic communities. By February 2010 only 12 per cent said they had difficulties.
66. *Enacting legislations to support these accomplishments is important:* While people are now accepting one another compared to the immediate post-election violence, the laws to punish practice of negative ethnicity and discrimination are yet to be enacted. Equal opportunities and equality bill, hate speech bill, and also Freedom of Information bill, if enacted, would go a long way in eroding the basis for negative ethnicity. The National Cohesion and Integration Commission has already begun identifying strategies for addressing some of these practices but absence of relevant laws will constrain progress in this regard.

<sup>49</sup> Interview with a district officer in Nakuru district, 6 March 2010

Figure 4: Does your ethnic community have problems getting along with other ethnic communities in Kenya? (Comparison of surveys)



67. Trust in members of other communities is also on the increase. Unsurprisingly, people largely trust their relatives, neighbours and members of their own ethnic group or co-ethnics. They trust members of other communities less. They do not trust the rich and members of other races.

Table 8: How much do you trust each of the following types of people? Comparison survey

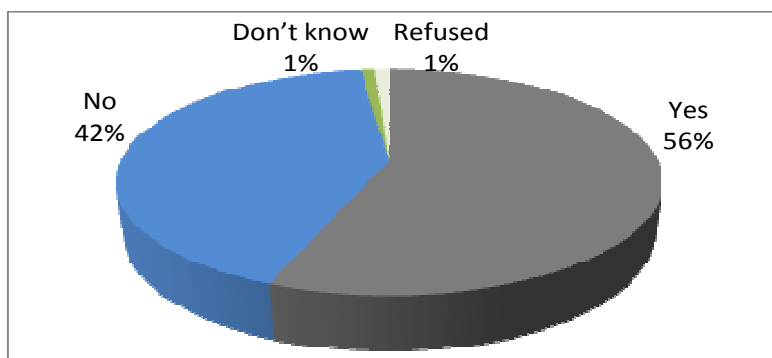
	December '08			August '09			January '10		
	Trust	Don't trust	Don't know	Trust	Don't trust	Don't know	Trust	Don't trust	Don't know
<i>Your relatives</i>	85%	15%	0%	86%	14%	0%	84%	16%	0%
<i>Your neighbours</i>	67%	33%	0%	70%	30%	0%	71%	30%	0%
<i>Members of your ethnic community</i>	60%	40%	0%	68%	31%	0%	68%	32%	0%
<i>Members of other ethnic communities</i>	38%	61%	0%	45%	54%	0%	49%	50%	1%
<i>Rich People</i>	--	--	--	29%	70%	2%	32%	67%	1%
<i>Poor people</i>	--	--	--	64%	35%	1%	65%	34%	0%
<i>Members of other races</i>	--	--	--	40%	56%	4%	41%	57%	2%

68. *These findings point to progress in reconciliation.* That is, the past two years have shown improvement in terms of communities getting along with each other. There is general acceptance of other people. But as noted in the previous reports, this general picture is very different in certain parts of the country such as Rift Valley Province, where relations between

groups are marked by anxiety and national conflicts usually cause inter-group tension among them.

69. *Kenyans blame politicians for poor relations and violence:* Current and previous surveys have shown that Kenyans blame politicians for instigating violence. They also show that politicians have great influence in promoting peace and reconciliation. Although some politicians have been threatening IDPs and other victims in an attempt to keep them from participating in truth seeking and accountability mechanisms, others have also been preaching peace.

Figure 5: In the last six months have you heard speeches from political leaders discussing the restoration of peace and stability?



70. The National Cohesion and Integration Commission has summoned persons associated with hate speech. Although the NCIC has the power to impose fines on such persons, it has sought to discourage such use of hate speech before taking firmer action.<sup>50</sup> The NCIC has become an important institution for people to raise concerns about perceived ethnic discrimination.

## CONCLUSION

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71. The problems facing IDPs are far from over. Although the Government has provided assistance to many of them, about half of households registered as potential beneficiaries for reconstruction assistance are yet to receive the funds. It is important that the government expedites disbursement of funds to these households so that they can reconstruct their homes without further delay.
72. The plight of IDPs has continued to recede on the list of national priorities. This calls for increased civil society advocacy to bring the IDP question back on the agenda. The investigation into the alleged irregular disbursement of the Humanitarian Fund should be speeded up and concluded with speed. Fostering accountability in the use of these funds is critical.
73. Finally, there is need for the Government to take a human rights approach in addressing the problem of IDPs. Participation of IDPs in identifying solutions and making key decisions on suggested solutions, transparency and openness in the use of funds, responsibility and accountability in decision-making should form the main values and principles directing how the IDP problem is resolved.

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<sup>50</sup> Interview with member of NCIC, 4 march 2010

## 4. AGENDA ITEM 3: RESOLVING THE POLITICAL CRISIS (POWER SHARING)

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### Introduction

74. Agenda Item 3 recognised that the 2007 post election crisis revolved around issues of power and the functioning of state institutions. The mediation underlined that resolving the crisis required adjustments to the constitution to provide for power sharing and the formation of a Grand Coalition Government. This agenda was predicated on the assumption that power sharing would enable the government to fast track reforms. It was hoped that there would be 'unity of purpose' to enable both parties to make decisions on important national issues.
75. This section examines how the parties in the Grand Coalition Government are working together and how they are operationalising the principles undergirding power sharing and the coalition itself. The report covers the period between January and March 2010.

### Key findings

#### *Summary of findings*

- Coalition continues to hold together but portrays the image of 'two-governments-in-one'.
- New alliances form within the coalition thereby reducing cohesion.
- Factionalism affects the constitution review process.
- Continued politicisation of reforms hinders service delivery.

### Why power sharing?

76. Past reports pointed out that power sharing is usually recommended as a mechanism for promoting stability in deeply fragmented societies because no single party can govern alone. Inclusive government, therefore, brings all major parties together to enable hard decision making and promotion of the national good. A Grand Coalition usually brings together all groups to protect and promote national unity.<sup>51</sup>
77. Power sharing also requires political elites to compromise, consult and negotiate, and rise above sectional (ethnic) and personal differences. It requires the leadership to nurture a sense of unity of purpose in order to pursue reforms critical for the stability of the country. As noted in the previous reports, structured mechanisms for building consensus and general consultations are established to ensure that relevant laws, policies and reforms are implemented with bi-partisan support and approach.
78. The Kenya Grand Coalition Government was not formed as an end in itself. It was meant to facilitated pursuance of comprehensive reforms including those that would address the fundamental causes of the crisis. For this to be achieved, the parties needed to work together in good faith as partners, compromise and engage in consultations for the sake of moving the country forward.

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<sup>51</sup> Lijphart, Arend (1969), 'Consociational Democracy'. *World Politics*, 21, 2: 207-225; Lijphart, Arend (2004), 'Constitutional Design for Divided Societies' in *Journal of Democracy* Volume 15:2: 96-108; Reynolds, Andrew, Ed. (2002). *The Architecture of Democracy: Constitutional Design, Conflict Management, and Democracy*. London: Oxford University Press.

## New political conflicts within the coalition

79. *Image of two governments in one persists:* Two years since the formation of the coalition government, cohesion within Government has been elusive. The image of ‘two-governments-in-one’ persists. Divisions along ethnic and political lines continue to be manifested within Government. These divisions now pose a threat to the passage of a new constitution. Lack of cohesion has its origins in multiple interpretations of the National Accord and Reconciliation Act (referred to here as National Accord) as well as the unending suspicion and mistrust that characterised relations between the two parties even before the post-election violence. Furthermore, both parties had distinct ideals about how they intended to govern if they won the elections. Be that as it may, the purpose of power sharing is to establish a framework for dissolving these differences and uniting to pursue the common good in the national interest. Achieving this unity of purpose remains a major challenge.
80. *The Principals’ different positions on issues reflect disunity:* By the end of 2009, the two Principals appeared to have established cordial working relationship. The two Principals appear to be together but their actions on some important issues show their differences - they take opposing stands on important national issues.<sup>52</sup> This is reflected in how the two Principals have recently approached important issues such as the war on corruption. For instance, when allegations of corruption in the free primary education fund and the subsidised maize scheme came to the fore, the Prime Minister asked that both the technocrats and politicians in the two ministries ‘step aside’ to allow for investigations. Two officers in his Ministry stepped aside. Later the President suspended only the technocrats, including the two from the Prime Ministers office. Thereafter the Prime Minister suspended two Ministers but the President overturned this decision. The debate that followed these actions did not centre on how to fight corruption; instead the debate focused on who has the power to suspend Ministers. These squabbles have denigrated the government’s war on corruption. Furthermore, Ministers now appear unwilling to assume political responsibility: the technocrats shoulder the burden..
81. *Conflicts affecting operations of the Government – the Cabinet did not meet between mid-February and end of March:* The conflicts between the two principles affect operations within the government and also trickle down to the local level, exacerbating tensions between different communities: ‘when the Principals are publicly working together, things move well in government. When they engage in open conflict, making decisions slows down’.<sup>53</sup> Possibly because of this the Cabinet itself has not met from the middle of February 2010. This affects the running of the government since issues that need cabinet approval are left pending.<sup>54</sup> Further, for the last one year, there has been no Leader of Government Business in Parliament. Some MPs argue that this has slowed down the government’s legislative pace.
82. *No structured consultations between the partners:* Disunity within the coalition is the result of limited or no structured consultation between the two Principals and the failure to recognise that power sharing is a reality. Two years on, the coalition has no formal framework to guide its operations. This has resulted in continuous disagreements on the meaning of power sharing, which in turn increased incoherence. Past reports pointed out that without this framework, engagement between the two parties is usually ad hoc. The Permanent Committee for the Management of Coalition Affairs has failed to fill this gap. The

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<sup>52</sup> Interview with a Chief, 31 January 2010

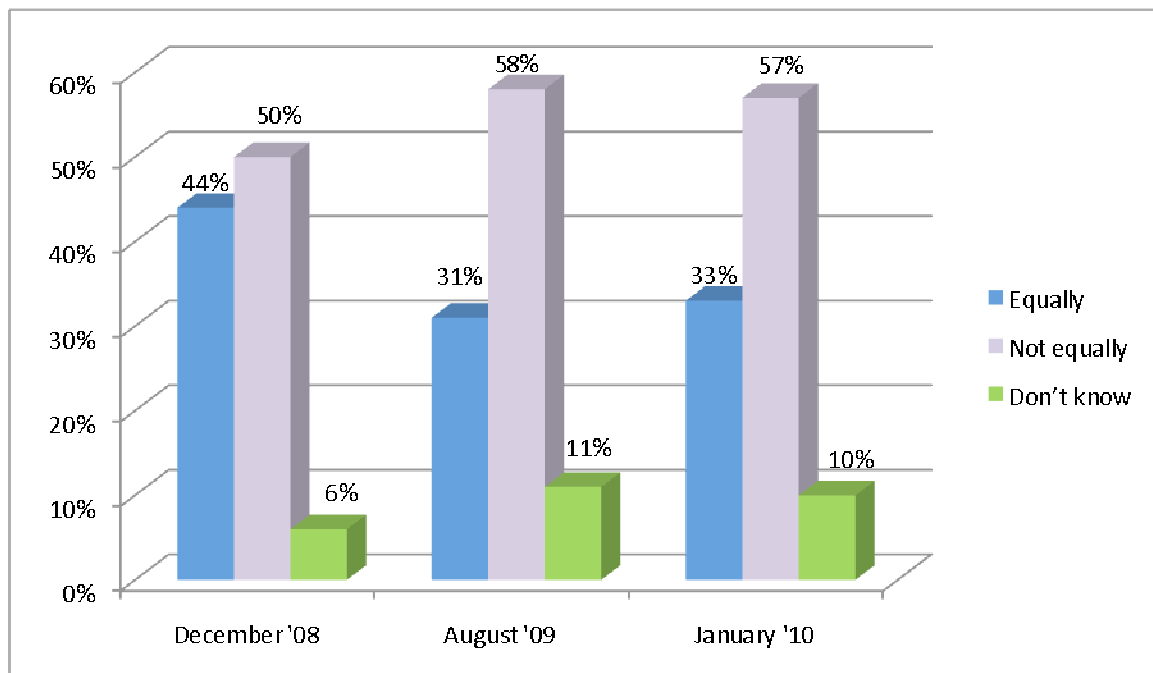
<sup>53</sup> Interview with official, Ministry of Justice, National Cohesion and Constitutional Affairs, 10 March 2010

<sup>54</sup> Interview with a senior official, Ministry of Justice, National Cohesion and Constitutional Affairs, 10 March 2010

health of the coalition, therefore, is dependent on the relations between the two Principals rather than on an agreed framework of operation.

83. *Parties are still not agreed on the meaning of power sharing:* PNU argues that the President has the power to exercise executive authority; the constitution does not give power the Prime Minister. ODM, on the other hand, argues that the spirit of the National Accord envisioned power sharing between the President and the Prime Minister and therefore both should be consulting in making key decisions. On the whole, the problem of power sharing continues to poison relations between the two partners thereby firming perceptions of ‘two governments in one.’
84. *The public also feels power is not equally shared:* The general public similarly feels that power in the Coalition Government is not equally shared. The February survey asked ‘Do you think power in the Coalition Government is shared equally or not equally? Upto 57 per cent of the respondents said power was not shared equally while 33 per cent said power was shared equally. Of those who said ‘power was not shared equally’, 71 per cent said PNU has more power while only 29 per cent said ODM has more power.

Figure 6: Do you think power in the Coalition Government is shared equally or not equally?



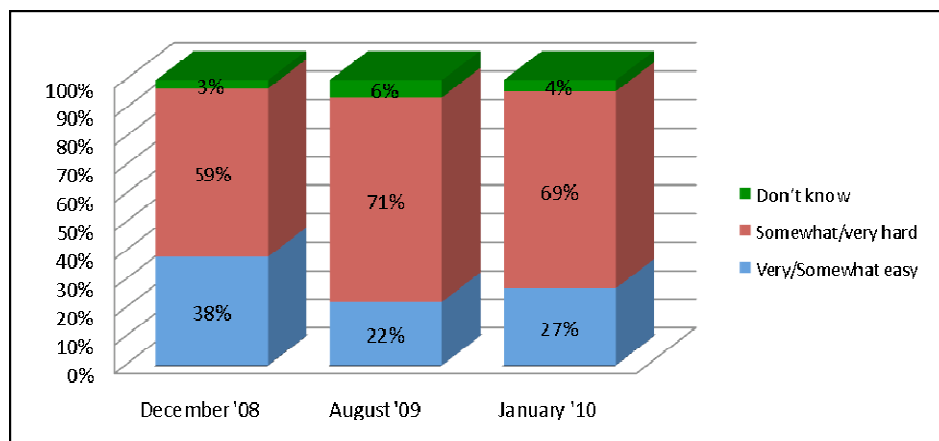
85. *Disagreements leading to negatively competitive behaviour:* Lack of cohesion and adoption of different and opposing viewpoints on national issues have engendered unhealthy competition behaviour within the coalition. Allies of both parties appear to be in constant, usually harmful, competition – often seeking to outdo one another in readiness for the 2012 elections.

Table 9: Do you think all of the parties are committed to sharing power in the coalition equally, or do you think some parties want more power?(Comparison of August and December surveys)

	December '08	August '09	January '10
Equally	34%	23%	24%
Some want more power	60%	63%	65%
Don't know	5%	13%	11%
<b>Which party wants more power?</b>			
PNU	41%	35%	36%
ODM	38%	47%	43%
Both PNU and ODM	21%	18%	20%

86. *War on corruption a theatre for supremacy contests:* The war on corruption, among others, has turned into a competition in terms of who can profile the other as most corrupt or anti-reformist. Throughout February and March, for instance, the two partners sought to outdo or outshine each other. This informed acceptance or rejection of any policy including provisions in the draft Constitution. This also clouded the steps the government had made to fight corruption; in February 2008, for instance, senior technocrats convened in a high level meeting to discuss how to address corruption in ministries and parastatals. The conflicts that ensued later clouded this important initiative. Significant also is that because of these conflicts, more people are now of the opinion that the coalition is not working together. In the February survey, 38 per cent of respondents believed that the Coalition Government had a very/ somewhat easy time working together in December 2008; this dropped to 22 per cent six months later. In January 2010, only 27 per cent of the respondents think the coalition has an easy time working together.

Figure 7: Does the Coalition Government have a very easy, somewhat easy, somewhat hard, or very hard time working together?





87. *Unequal power distribution deepening patronage politics:* Inability to resolve the issue of how to share power and distribute key public sector posts has had one consequence: deepening of patronage politics. Ministers now appoint their friends and political allies to senior positions on the basis of patronage rather than merit and without following due process. Some are making appointments on the basis of ethnicity or nepotism.<sup>55</sup> This mode of appointments and composition of public sector positions has the potential to reduce accountability within the ministries and makes it difficult to punish corrupt personnel.

### **Inter and intra party cohesion**

88. *Political divisions continue to evolve within and among individual political parties:* As reported in the previous report, these divisions are the result of shifting alliances that are forming to advance the individual interests of key politicians. Some of these alliances appear aimed at blocking certain reforms and policies, especially those perceived as threatening the interests of key politicians. In this regard, the prosecution of PEV suspects, debates on the constitution review and the 2012 elections have become the flashpoints around which inter and intra party divisions revolve.
89. *New centres of power have developed within each party; they can block reforms:* The different issues that the country is addressing and the hard decisions that have to be made have resulted in development of new centres of power developing within the main parties. These are in turn contributing to incoherence within the coalition and have prevented the two Principals from firmly controlling their individual parties. This makes it difficult to develop a common approach on reforms. Some of the new alliances are aimed at blocking important policies if they threaten to undermine the individual interests of key leaders. In particular some have emerged possibly to block ICC prosecutions and undermine any efforts to bring leaders to account. But the divisions themselves reflect lack of leadership in the political parties and on the reform agenda in general.<sup>56</sup> The failure to decisively address the problem of high level corruption is reflective of the influence of individual political interests over national interests. Thus, some politicians feel they can disregard orders without any repercussions.<sup>57</sup>
90. *Inter-Party Parliamentary Group Meetings are rare:* During this period, there were several individual party parliamentary group meetings convened to assist each party develop a common position on reforms. However, joint coalition meetings were rare and limited to issues of the constitution. Regular inter-Party Group meetings are critical for the purpose of developing bi-partisan approaches and positions and strengthening cohesion within the Coalition.

### **Cohesion in decision-making**

91. *Cohesion is still elusive:* Lack of cohesion within the parties has continued to affect coherence in decision-making within the Government two years after the formation of the coalition. The different official positions taken by individual parties have projected a public perception of 'two governments in one.' This has at times constrained delivery of services and has partly contributed to the slow pace of reforms.
92. *Lack of a framework to manage the Coalition to blame for incoherence:* Incoherence in Government has been a feature of the Coalition since formation. Partly to blame is the lack of a binding agreement to manage the Coalition or even enforce key decisions. Essentially,

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<sup>55</sup> Interview with a Commissioner, National Cohesion and Integration Commission, 17 February 2010

<sup>56</sup> Interview with an official, Ministry of Justice, National Cohesion and Constitutional Affairs, 10 March 2010

<sup>57</sup> Interview with an MP, 17 February 2010



there are no adequate conflict resolution mechanisms hence political conflicts filter into the cabinet, affecting its cohesion.

93. *The referendum and the 2012 election require a conflict resolution mechanism:* there are two important dates for which cohesion in the Coalition Government is critical: the referendum and the 2012 elections. Any disagreements over the constitution or intensification of succession politics will feed into the 2012 elections. Establishing a mechanism for resolving disputes and showing unity of purpose is very important at this state. Already, the Interim Independent Constitutional Dispute Resolution Court (IICDRC) is in place. The parties should be encouraged to use the court to address any dispute to avoid conflicts spilling over to the process leading to 2012.

### Public satisfaction with the Coalition Government

94. *Public satisfaction with the Coalition Government performance on increase compared to 2008:* performance of the Coalition in certain areas has shown marked improvement compared to 2008. These include protecting the rights of the media, giving IDPs financial support and respecting human rights. There is also improvement in their perception about whether the Coalition will deliver a new constitution. From a low of 31 per cent satisfaction rating in 2008, those satisfied with the government performance in implementing constitutional reforms increased to 54 per cent by February 2010. But the public remains critical of performance in addressing problems of youth unemployment and regional inequalities.

Table 10: How satisfied are you with the Coalition Government's performance in the following areas?

	Dec '08			August '09			Jan '10		
	Satisfied	Dissatisfied	Dk	Satisfied	Dissatisfied	Dk	Satisfied	Dissatisfied	Dk
Promoting reconciliation among groups in Kenya	48%	50%	1%	48%	48%	3%	58%	39%	3%
Giving IDPs financial support	40%	58%	2%	36%	57%	6%	50%	47%	3%
Respecting human rights	31%	68%	1%	42%	54%	3%	49%	49%	2%
Resettling IDPs	43%	55%	2%	37%	58%	5%	51%	46%	3%
Promoting democracy	38%	60%	1%	43%	52%	5%	-- <sup>58</sup>	--	--
Reducing tensions between ethnic communities in Kenya	47%	51%	1%	46%	51%	3%	----	----	---
Protecting the rights of the media	23%	75%	2%	52%	42%	5%	51%	43%	5%
Implementing constitutional reforms	31%	66%	2%	31%	64%	5%	54%	40%	6%
Addressing the problem of youth unemployment	16%	82%	1%	32%	66%	2%	25%	73%	1%
Addressing the problem of regional inequalities in Kenya	--	--	--	29%	63%	7%	34%	61%	5%
Evicting people from forests	--	--	--	--	--	--	60%	37%	3%

<sup>58</sup> The dash implies the indicator was not asked during the survey.

95. *Kenyans are unhappy about corruption and political conflicts:* Kenyans are also unhappy about corruption, political conflicts and tribalism. The government is perceived to lack commitment to reforms and to fighting corruption. The public views government as only engaging in political wrangles. Asked about two things they dislike most about the Coalition Government, close to 40 per cent identified these three as the things they disliked most.

Table 11: What are two things you dislike most about the Coalition Government?

Rampant corruption	17%
Political wrangles	15%
Tribalism	6%
High cost of living	5%
Nothing	5%
Unemployment	3%
Poorly performing politicians	3%
Disunity amongst politicians	3%
Hate speeches amongst political leaders	3%
False promises from leaders	3%
Selfishness of politicians	3%
Other	34%

96. *There are things that Kenyans like about the Government: Free Primary Education, restoration of peace, improved infrastructure, and health care:* About 35 per cent identified improved basic services and restoration of peace as what they like most about the Coalition Government.

Table 12: What are two things you like most about the Coalition Government?

Nothing	19%
Free primary education	17%
Restoration of peace	7%
Improved infrastructure	7%
Improved health sector	4%
CDF funds	3%
Environmental conservation	3%
Leaders working in harmony	3%
Kazi kwa vijana	3%
Other	34%

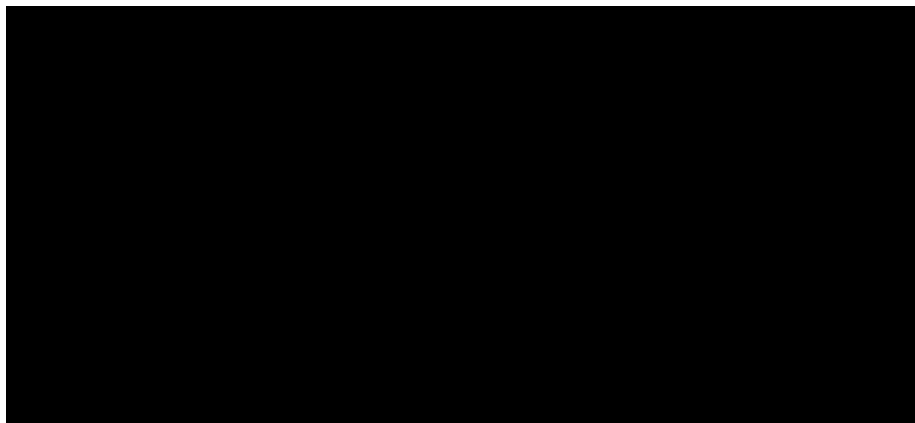
97. Kenyans by and large remain anxious on economic concerns and their material well-being. Nearly 20% of all responses are concerned about unemployment. Despite the starting of 'Kazi kwa vijana' and other youth oriented initiatives, the problem of unemployment especially amongst the youth has not yet been effectively tackled. The high price of goods, inadequate food, education, and fighting corruption are the other major concerns.

Table 13: What do you think are the three most important priorities for this government to address in the next twelve months?

December '08		August '09		January '10	
Jobs	19%	Jobs	20%	Jobs	18%
Reducing the price of goods	19%	Reducing the price of goods	15%	Reducing the price of goods	13%
Ensuring adequate food	12%	Ensuring adequate food	10%	Ensuring adequate food	10%
Education	9%	Education	9%	Education	9%
Fighting corruption	4%	Fighting corruption	5%	Fighting corruption	6%
Restoring peace	7%	Restoring peace	4%	Restoring peace	4%
Resettling IDPs	4%	-	-	Resettling IDPs	0%
-	-	Fighting poverty	7%	Fighting poverty	10%
Media freedom	3%	-	-	Media freedom	2%
Constitutional revision	3%	-	-	Constitutional revision	3%
Land reform	3%	-	-	Land reform	1%
Other	6%	Other	20%	Other	15%

98. Regardless of the slow pace of reforms and public service delivery, most of the public want the Coalition Government to serve its full term until 2012.

Figure 8: Do you prefer that the Coalition Government continues until 2012, or do you prefer that the country holds general elections before 2012?



## **Independent Review Commission on the General Elections held in Kenya on 27 December 2007**

99. In line with the recommendations of the Independent Review Commission on the General Election held in Kenya on 27 December 2007 (IREC), the government set up the Interim Independent Electoral Commission (IIEC) and an Interim Independent Boundaries Review Commission (IIBRC) through the Constitution of Kenya (Amendment) Act, 2008.
100. *The IIEC voter registration is not continuous – some people may be locked out:* The IIEC was tasked with reforming the electoral system and institutions. The commission has already set up a fully-fledged secretariat; recruited 17 regional coordinators and 210 constituency coordinators and begun the voter registration exercise on 22 March 2010, targeting the registration of 10 million voters at the end of the 45 day period exercise.<sup>59</sup> The voter registration exercise is not continuous and therefore may not register all potential interested eligible voters, who will therefore not take part in the referendum. This is one area on which electoral reforms should focus– making voter registration a continuous exercise and aligning it with registration of persons. Indeed IREC recommended that registration of persons and voters be conducted simultaneously. This will lead to registration of more voters and limit multiple registrations.
101. *Electronic voter register is innovative; expansion of coverage should be prioritised:* The Commission has received Ksh1.2 billion from treasury to start the voter registration process with the Government supposed to raise a further ksh 5.6 billion from the supplementary budget.<sup>60</sup> The Commission will carry out electronic voter registration in 19 constituencies around the country on a pilot basis.<sup>61</sup> When fully implemented, the electronic voter registration will restore public confidence in the entire process of voter registration, polling and tallying.<sup>62</sup> Although this is a pilot exercise, it is important to have all constituencies covered before the 2012 elections. Furthermore, the focus should not be on registration alone; computerisation procedures for polling and vote tallying should be put in place before the 2012 election date. An infrastructure for this already exists going by coverage of mobile telephony and GSM network in the country.
102. *Manual voter registration does not restore public confidence in the electoral process:* Currently, the IIEC is conducting manual voter registration. This is raising concerns that the exercise might be fraught with problems of multiple registration or manipulation of the register. If the new electoral system attracts the old accusations of a faulty register, the credibility of the whole process and of the IIEC itself will be damaged, risking a repeat of past events. The Commission should therefore seek to allay these fears through public education campaigns and introduction of electronic voter registration in the remaining constituencies after the pilot phase, of course integrating the lessons learnt during the pilot phase into the subsequent exercise.
103. *Confidence in the IIEC is improving:* As it is, 60% of Kenyans believe that the IIEC is capable of holding free and fair by-elections, with 56% responding similarly about a constitutional referendum. Importantly, this shows significant gains from August 2009 when only 36% were confident that the IIEC would be capable of holding free and fair by-elections and 34% were confident of a free and fair referendum.

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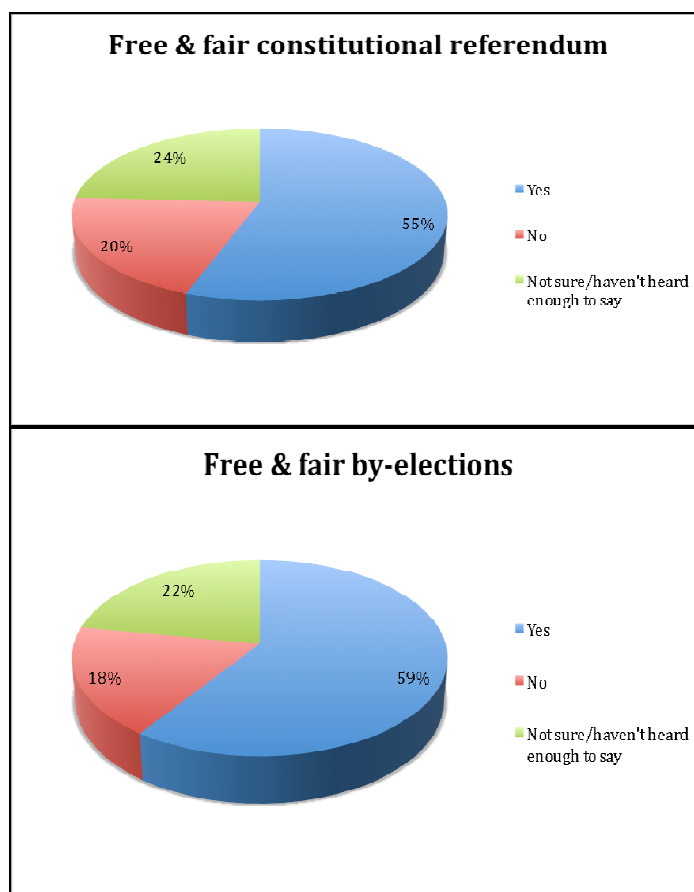
<sup>59</sup> Interview with IIEC Commissioner held on 16 February 2010

<sup>60</sup> Interview with, IIEC official held on 26 March 2010

<sup>61</sup> Targeted constituencies include Langata, Mvita, Imenti Central, Kikuyu, Nakuru, Ikolomani and South Mugirango

<sup>62</sup> Interview with IIEC Commissioner held on 16 February 2010

Figure 9: In your opinion, will the new Electoral Commission be capable of holding...:



### **The Interim Independent Boundaries Review Commission**

104. The Interim Independent Boundaries Review Commission (IIBRC) was mandated to provide recommendations on how to review the existing constituency and administrative boundaries to reflect geographical size, ease of communication, community of interest, population density and population trends.
105. The IIBRC started countrywide hearings on 1<sup>st</sup> February 2010, aiming to complete the hearings on 10 May 2010. However, as previously reported, the Commission still faces challenges of overlap with the ongoing review process. The draft constitution has provided for the continuity of the IIBRC after the passing of the constitution. However, the Interim Commission does not have a mandate to determine boundaries for the proposed Counties. How various boundaries are mapped out has always been a political rather than administrative problem. This implies that the final outcome of IIBRC will be similarly politicised. IIBRC must, therefore, launch an intensive public education and information campaign ahead of its final outputs. It should also synergize with the relevant parliamentary committees in order to mobilise the required political support.

## CONCLUSION

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106. Cohesion within the government has remained a major challenge since the formation of the Coalition. The Principals have not always managed to rally their parties together for the national good. Rather, political, ethnic and sectarian interests have dominated the reform process and are derailing consensus building on the constitutional review process. An effective conflict resolution mechanism is yet to be established.
107. To repeat what previous reports have emphasised, there is no effective conflict resolution mechanism in place, nor does the Coalition operate on the basis of a binding agreement. The Permanent Committee on the Management of Coalition Affairs has not been effectively utilised; its meetings appear too ad hoc and infrequent to have meaningful impact.
108. In the absence of an agreement and an effective management committee, the Coalition Government runs on the basis of a gentleman's agreement and general good will of the two Principals. Thus when they adopt opposing viewpoints or fail to support each other, consequences show in the form of anxiety and tensions which quickly spread across the government and Kenyan society in general.
109. Cohesion is critical for the purpose of transiting smoothly to the referendum on the new constitution and into the General Election. It is important that national interests supersede individual political interests in order to pull the nation together towards the next election and possibly a new dawn if a new constitution is passed at the referendum. Even more important is the need of the national leadership to mobilise people to participate effectively in both the voter registration exercise and the voting itself. Their support for electronic system in registration and voting is require at this very early stage as the country seeks to enhance integrity of the voting process.

## 5. AGENDA ITEM 4: LONG-STANDING ISSUES AND SOLUTIONS

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### Introduction

110. Agenda item 4 identified what were considered the underlying issues that had caused the crisis in Kenya and which needed to be addressed because they threaten the existence of Kenya as a nation. Agenda Item 4 was, therefore, designed to provide the framework for undertaking comprehensive constitutional and institutional reforms to address the root causes of recurrent conflict and create a better, more secure and prosperous nation.
111. Previous reports pointed out that perceptible headway has been made with respect to certain aspects of agenda item 4. There have been accomplishments in some areas but the pace of reforms has been too slow to have significant impact. The reports underlined the need to speed up reform because the slow pace had disillusioned the public.
112. The long-standing issues identified under Agenda Item 4 were:
  - Undertaking constitutional, legal and institutional reforms;
  - Undertaking land reforms;
  - Tackling poverty and inequality, and combating regional development imbalances;
  - Tackling unemployment, especially among the youth;
  - Consolidating national cohesion and unity; and
  - Addressing transparency, accountability and impunity.

### Key Findings

#### ***Summary of findings***

- Institutional Reforms
  - PSC deliberations in Naivasha agreed on contentious issues
  - The COE incorporates PSC recommendations into the constitution
  - Parliamentarians retreat at the KIA fails to establish consensus on the changes to be made to the draft
  - Proposed Constitution of Kenya is presented to Parliament and debate begin
- TJRC continues to lose credibility amidst pressure on the Chair to resign
- National Cohesion and Integration Commission begins its work, which is positively perceived

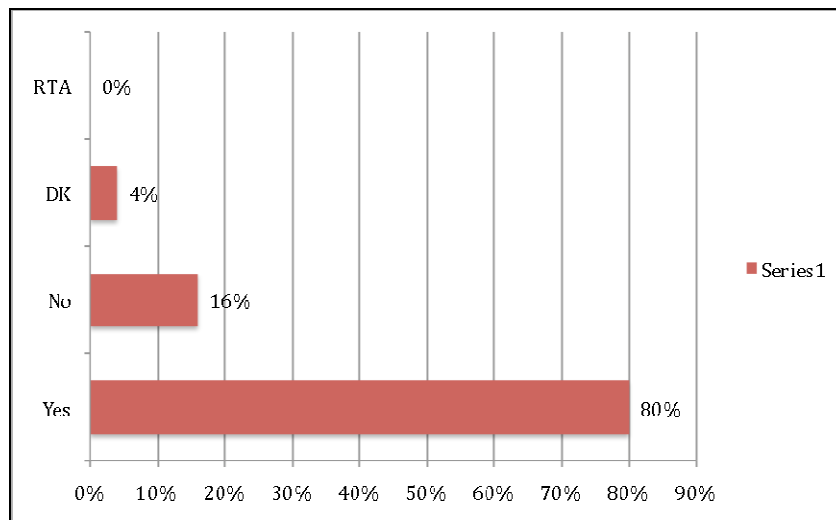
### Constitutional and institutional reforms

113. *Constitution review on fast track:* During this review period, January to March, 2010, a number of important milestones in the constitutional review process were achieved. First, the PSC deliberations in Naivasha in January resolved several issues in the draft, which the Committee of Experts (CoE) had identified as contentious. Second, the CoE revised the PSC recommendations and finalized the drafting of the Proposed Constitution of Kenya, which they handed over to the Parliamentary Select Committee (PSC). It was tabled in Parliament

on 2 March 2010. Parliament began debating on the draft from 23 March 2010.

114. *The CoE and the PSC synergised their work:* The completion of the Proposed Constitution of Kenya was an important step in the constitutional review process because the draft comprises, firstly, the revisions of the Harmonized Draft and the publics' views on it, as incorporated by the CoE, and, secondly, the Parliamentary Select Committee views presented in their meeting at Naivasha. The draft has been produced without acrimony between the CoE and the PSC. It is worth noting that, in the past, the PSC and parliament itself have always been major hurdles in the review process. Scaling these hindrances implies passing important obstacles in the review process.
115. *The public now believes that a new constitution is imminent:* People's enthusiasm for a new constitution remained quite high. Only 33 per cent think that the Coalition Government is unlikely to make a new constitution this year while 59 per cent think it is likely that the Government will make a new constitution. Only about 7 per cent do not know whether this is likely or unlikely.
116. *Voter turn out in the referendum is likely to be high:* In the survey, when asked, 'if a new constitution referendum is held this year, will you turn out to vote', as many as 80 per cent said they will vote; 16 per cent will not vote, while 4 per cent do not know whether or not they will vote.

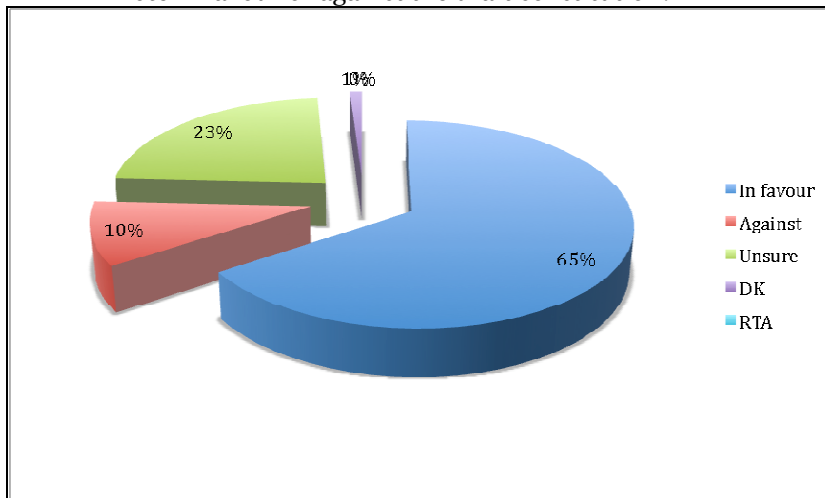
Figure 10: If a constitution referendum is held this year, will you turn out to vote?



117. In the February survey, 65 per cent of those who said they will vote in the referendum will vote in favour of a new constitution. Only 10 per cent will be against the new constitution while 23 per cent are not sure.



Figure 11: If you will vote in the referendum, do you think you will vote in favour or against the draft constitution?

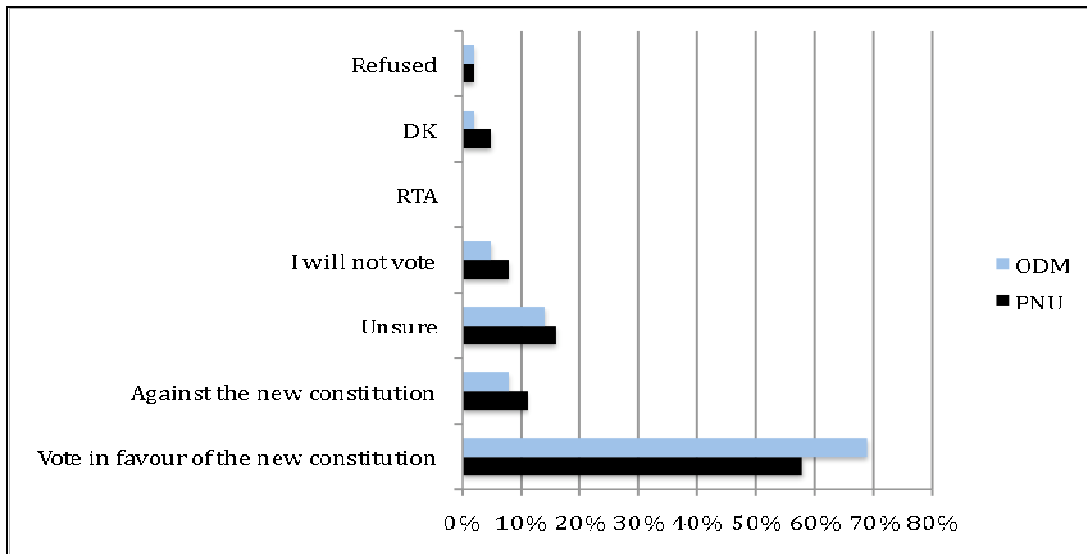


118. About 10 per cent of those who said they feel close to a particular party will vote against a new constitution. More people in ODM would vote for a new constitution than in PNU. Those unsure are about the same – between 14 and 16 per cent.

Table 14: Regardless of your party position on the draft constitution, will you...?

	Total	PNU	ODM
Vote in favour of the new constitution	62%	58%	69%
Against the new constitution	10%	11%	8%
Unsure	16%	16%	14%
I will not vote	6%	8%	5%
RTA	0%	0%	0%
DK	4%	5%	2%
Refused	2%	2%	2%
	100%	100%	100%

Figure 12 : Regardless of your party's position on the harmonised draft, will you...



119. *Ethnic, sectarian and individual interests prevent consensus on amendments.* Prior to starting formal deliberations on the draft constitution in Parliament, the House adjourned for a week on 17 February 2010, and went on a retreat at the Kenya Institute of Administration (KIA) in Lower Kabete, to caucus and build consensus on the draft constitution before debates in Parliament. The KIA retreat failed to agree on any key amendments to the constitution owing to inter- and intra-party difference; regional, sectarian, ethnic and personal interests. These differences later shaped discussions on the draft constitution resulting in MPs' failure to agree on what to amend.
120. *The review has passed traditional obstacles and hurdles:* So far, the review process has passed the initial hurdles, which have hitherto been the PSC and the Parliament itself. Surmounting these obstacles was not necessarily because of the good-will of these organs but rather the result of the legal framework governing the review process. It is this framework that has secured the process from political mischief. The law sought to fill loopholes previously exploited, politically technically, to prevent completion of constitution review. Some of these include the requirement that any amendment of the proposed draft should enjoy support of 145 MPs out of a total of 222 Mps. And even if the amendment were to get the required support, the CoE would finally determine the relevance of the amendment. Further, if there are disagreements between the Parliament and the CoE, then the reference groups would be called to facilitate a consensus. Any disagreement between the COE and the National Assembly would only be resolved through by involving the reference group.
121. *Ethnic divisions have reduced; sectarian interests are filling the gap:* In the past, differences over a new constitution centred on the perceptions and actions of various ethno-regional interests mobilised for or against a position. At present, however, the main disagreements are sectarian. Sections of the Christian Church are yet to show support to the draft; they are opposed to the draft on account of a number of contentious issues that the draft did not address. Be that as it may, one may argue that this is a positive development since the differences are over issues rather than narrow ethnic persuasions. It is possible

that the main conflict will be one between political and some church leaders. However, it is also worth noting that the debate on some of these issues has distracted attention away from what has always been the focus of debates on a new constitution: reforming the state and its institutions. The church itself has been at the forefront of this campaign for comprehensive reforms. It is ironic therefore that the church is likely to be seen by some as a new hurdle in this process.

### **Challenges ahead**

122. *Contentious issues arousing sectarian divisions:* The review process is challenged by an inability to resolve some of the contentious issues. Sometimes such issues are resolved but reappear depending on new interests and perspectives. They become new sources of tension and further polarization. Thus, while the Kadhi courts and the provisions on the right to life appear to have been discussed at different stages, they re-emerged as new sources of dissension. Similarly, devolution appears to be contentious. As noted above, regional, individual political interests, and sectarian interests are some of the obstacles, at different times depending on the interests presented. The land issue is also another source of controversy. These are simply a reflection of the complexity of the long-standing issues that remain unaddressed.
123. *Continued vigilance will be necessary to prevent efforts to derail the process:* These interests have so far not derailed the review process. This is not to suggest that the review will move to the referendum smoothly. These interests may coalesce around a single issue and prevent the review from moving forward. There are only a few months to the referendum; there is need to continuously monitor the evolving dynamics and identify suitable strategies for addressing them. This calls for vigilance from all the stakeholders.
124. *Heightened level of disharmony:* As noted above, recent political developments have heightened the level of disharmony between the two principals; between the main political parties ODM and PNU; and, within their members and supporters. This disharmony is the biggest threat to the finalisation of the review process.<sup>63</sup> Indeed, the successful completion of the remaining part of the constitutional review process hinges a lot on the extent to which these tensions will be kept out of the public view.
125. *Continued threats from 'single-issue' groups:* Since the constitutional review began, the process has been under constant threat from a number of single-issue groups that peg their support for the new constitution on the presence or absence of certain clauses. Some Church leaders have always threatened to campaign against the new constitution over perceived issues of abortion and the retention of the Kadhi Courts. These are generally presented as contentious but with different dimensions because if concessions are made, other groups are likely to rise up citing the need for new amendments. To prevent these demands from derailing the progress made this far, there is need to establish a dispute resolution mechanism, which will devise strategies for addressing the issues raised.

### **INSTITUTIONAL REFORMS: THE JUDICIARY**

126. The judiciary is yet to fully embrace performance contracting in line with new public sector management approaches. Inadequate administrative facilities and understaffing continue to

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<sup>63</sup> NCSC Press Briefing on Friday February 19, 2010, entitled: Political Altercation the Biggest Threat to New Constitutional Order”.

hamper the delivery of justice. Currently, the Judiciary has vacancies for 24 judges. The High court is the most affected by understaffing; the court is required to have a total of 70 judges but has only 46.<sup>64</sup>

127. There are no substantive policy and institutional reforms that have taken place in the judiciary since 2008. But there are several and significant initiatives undertaken within the judiciary which lay a framework for judicial reforms. The Judiciary is installing information communication technology in all judicial departments across the country. The installation of video conferencing equipment will enable magistrates to handle prison cases from their offices. This will expedite the hearing of cases, enhance security and save transportation expenses.<sup>65</sup>
128. The report on the Taskforce on Judicial Reforms is also finalised. A team was also constituted to incorporate views from the partners in the Coalition Government and other stakeholders, and harmonise the draft with the proposed new constitution<sup>66</sup>. The proposed new constitution itself contains a number of judicial reforms and it is expected that substantive reforms will be undertaken once the new constitution comes into effect.<sup>67</sup> And if not, the recommendations by the Taskforce are substantive enough to transform, positively, the judiciary.

#### *Institutional reforms: the police*

129. *Implementation committee is working:* A Police Reforms Implementation Committee was formed on 12 January 2010. The 15-man team has been developing a framework to operationalise the recommendations of the Police Taskforce. The Committee has set up various work groups that have already identified action points and a framework for operation. It is certain that the implementation of the Task Force Report (Ransley report) would have far-reaching effects on the police force as an institution. Similarly, the proposed constitution provides for comprehensive policy, administrative and institutional changes. However, a point of concern, however, is that, to date, the police reform has been limited to only reshuffling of personnel. As noted above, the failure to reform the police before the next general election is an issue of concern. There is an urgent need to prioritise reforms in the police to ensure that the force is comprehensively reformed in terms of attitude, behaviour and capacity well before the next general election.

## **LAND REFORMS**

130. The National Land Policy was approved by the Cabinet and passed in Parliament. However, its implementation is yet to start. Powerful landowners are likely to put pressure on powerful politicians to delay implementation pending the result of the referendum.<sup>68</sup>
131. *Reforms at the Ministry of lands – automation of records:* A number of important administrative reforms are being implemented at the Ministry of Lands. The Ministry is, for example, implementing an automated land rent integrated system expected to be operational from June 1, 2010. Once this is complete, Kenyans will be able know the status

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<sup>64</sup> Interview with a senior official, Judiciary, 17 February 2010.

<sup>65</sup> Ibid.

<sup>66</sup> Ibid

<sup>67</sup> Interview with an MP 17 February 2010.

<sup>68</sup> Interview with, Kenya Land Alliance . See also interview with KHRC

of land related issues with ease including by use of cell phone. However, the full roll out which would see the whole ministry and all districts across the country become fully ICT complaint is likely to take the next six years.<sup>69</sup>

132. *Updating boundaries and maps:* Land surveyors were moving round the country to demarcate disputed boundaries afresh. There are plans to also review and update the country's maps, which have not been updated for the last 30 years. This updating of maps is supposed to be done every ten years to include new developments such as schools, towns, hospitals and roads.<sup>70</sup>
133. *Cancellation of titles for irregularly acquired land:* The Ministry embarked on cancellation of title deeds where land earmarked for public utility purposes was irregularly allocated.<sup>71</sup> Overall, this marks a key step to deal with illegal acquisition of land and is an important entry point towards implementing recommendations of the Commission of Inquiry into Illegal/Irregular Land Allocations (Ndung'u report). However, critics argue that the Government has not disclosed the actual numbers on reposessed land parcels or surrendered titles, thereby raising concerns about the transparency of the whole process.<sup>72</sup> Given the significance and accomplishment of these steps by the Ministry, there should be systematic dissemination of information and public education. This will reduce the opportunities for manipulation by politically powerful land grabbers keen to avoid the spotlight.
134. *Developments in rehabilitation of the Mau Forest:* The Government has completed both Phase I and II of the Mau Forest rehabilitation, where a total of 21 000 hectares of forest land have been recovered. Preparations for phase three of the repossession and restoration of the Mau Forests Complex have also been completed. Phase III entails the recovery of titled forestland in Maasai Mau trust land forest.<sup>73</sup> Implementation of the national land policy should be swift as it will address redistributive justice, thus safeguarding access to a means of production which continues to be critical for many Kenyans.<sup>74</sup>

## **POVERTY INEQUALITY AND REGIONAL IMBALANCES**

135. The September 2009 report noted that the Government had undertaken a number of initiatives to address issues of poverty, inequality and regional imbalance. The government launched the National Economic Stimulus Program seeking to boost economic recovery and return the economy to the envisioned midterm growth path. To ensure food security, billions of shillings were allocated to irrigation schemes and agricultural projects to boost food production.
136. Food production during this period increased but the capacity to handle this growth appears inadequate. Milk production for instance went to waste for a while in February and March

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<sup>69</sup> Interview with a senior official, Land Reforms Transformation Unit on 11 February 2010.

<sup>70</sup> Ibid.

<sup>71</sup> See ministry of lands press statement dated 11 February 2010

<sup>72</sup> Statements a former Commissioner, the Commission on Illegal and Irregular allocation of public land (Ndungu Land Commission), made at the KACC – LSK Ethics and anti corruption workshop on 25<sup>th</sup> and 26<sup>th</sup> Feb. 2010 at the panari hotel. Nairobi

<sup>73</sup> Press statement, office of the prime minister, Mau Forest Interim coordinating secretariat dated 4 February 2010

<sup>74</sup> Statements, Kenya Land Alliance, made at the KACC – LSK Ethics and anti corruption workshop on 25<sup>th</sup> and 26<sup>th</sup> Feb. 2010 at the Panari hotel. Nairobi

because of limited processing capacity in the country. Already there are reports that maize and other crops are rotting in farms and at homes because of insufficient storage facilities. Improving the capacity of the various institutions is critical in this respect.<sup>75</sup>

137. The last report also noted that the cabinet had approved Ksh 250 billion for development of regional authorities for the next 8 years under the ministry of regional development. As part of setting the pace for this rollout, the Ministry of Regional Development launched its strategic plan for the period 2008 – 2012 on 1<sup>st</sup> February 2010. In line with the ministry's mandate, vision 2030 and the first medium term plan, the ministry will implement five development programmes to enhance integrated regional development and improve institutional capacity. It is expected that this will lead to creation of 213,000 to 956,000 direct and indirect jobs.<sup>76</sup> While these are ambitious targets, there is need for the Ministry to relate these to both vision 2030 and the devolved institutions under the proposed new constitution because if the draft passes the referendum, it will create new institutions or even alter the boundaries on which these proposes are anchored.

### **UNEMPLOYMENT, PARTICULARLY AMONG THE YOUTH**

138. The President signed into law the National Youth Council Act which provides for the establishment of a youth council to empower young people. The council will coordinate youth empowerment activities and mobilize resources to support and fund youth programs.<sup>77</sup> The president further launched The Youth Empowerment Summit on March 2, 2010 through the Ministry of Youth Affairs and Sports. The Summit brought together leaders from government, education, business as well as faith and community based organizations. The summit aimed at identifying barriers to youth employment and made actionable commitments to implementing solutions to youth empowerment in the country.<sup>78</sup>
139. *Kazi kwa vijana is not a comprehensive solution; it is only a temporary measure:* The Kazi kwa Vijana programme was meant to be a short-term six month project. However, when money was made available for the project in November 2009, the program was revived to extend beyond June 2010. The World Bank has provided US\$ 60 million, US\$ 43 million of which will go towards the sustenance of the KKV program for the next four years. Another US\$ 15.5 million of the World Bank funds will be administered through KEPSA towards a youth internship program, while the balance will go to the Ministry of Youth Affairs to help build their capacity.<sup>79</sup>
140. These initiatives have not addressed youth unemployment. Moreover, allegations of embezzlement of funds provided for Kazi kwa Vijana activities are yet to be fully investigated. Youth employment, therefore, still remains the biggest problem resulting in heightened crime levels and formations of illegal gangs in most parts of the country. In other countries such as China, India, Malaysia and Singapore, the youth bulge has been managed through skills upgrading by training institutions, vocational schools, internships etc. to ensure youth are not idle.<sup>80</sup> This suggests that a more comprehensive policy of addressing

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<sup>75</sup> Interview with senior official the ministry of planning and national development on 23 February 2010.

<sup>76</sup> Ministry of Regional Development authorities. <http://www.regional-dev.go.ke/>

<sup>77</sup> Interview with a programme Officer at the Youth Agenda On 22 February 2010.

<sup>78</sup> See <http://www.statehousekenya.go.ke/news/march2010/2010020301.htm>. accessed on 30 march 2010

<sup>79</sup> *ibid*

<sup>80</sup> Interview with a senior officer, ministry of planning and national development on 23 February 2010.

the youth problem should be developed. Kazi kwa Vijana is not a comprehensive solution; it is a temporary measure that is not sustainable.

## CONSOLIDATING NATIONAL COHESION AND UNITY

141. *TJRC losing credibility:* The TJRC has continued to face credibility challenges, especially concerning its Chair. Challenges are based on pressure for the Chairman to resign because of perceived conflicts of interest based on his association with, or knowledge about, matters that are likely to come before the commission<sup>81</sup>. This period saw increased pressure both, local and international, and from within the commission, to have the Chair resign to enable the Commission to proceed with its work, which the Chairman has strongly resisted. The matter is assuming ethnic and politicised dimensions. Those supporting the Chair observe that he is targeted on an ethnic basis, or by undisclosed sectarian interests, and threaten to boycott the TJRC process if he resigns. Despite these problems, by early February, about half of the survey respondents were confident that the institution will deliver on resolving past violations, investigating past abuses and promoting healing and reconciliation. But not many are confident that the institution will investigate past abuses of office by public officials. These figures suggest a need for TJRC to urgently address its credibility crisis.

Table 15: How confident are you that the TJRC will...

	August '09				January '10			
	Very confident	Confident	Not confident	DK	Very confident	Confident	Not confident	DK
Resolve past violations of human rights	9%	38%	40%	13%	14%	45%	34%	7%
Promote peace and national unity	15%	43%	30%	12%	19%	48%	26%	7%
Investigate past abuses of office by public officials	10%	31%	44%	14%	13%	39%	40%	8%
Promote healing and reconciliation among Kenyans	14%	41%	33%	12%	19%	47%	26%	8%
Identify those involved in past violations <sup>82</sup>	10%	31%	45%	14%	12%	35%	43%	9%

## National cohesion and integration commission

142. The cohesion commission began its work emphasising that it plans to foster cohesion in the country through civic education. The commission will also investigate and advise the government on addressing the inequalities that exist in the country at various levels, including ethnic inequalities, and also monitor income and job distribution.<sup>83</sup>
143. The NCIC has taken an unusual path to reconciliation, by addressing ethnicity, particularly

<sup>81</sup> See for example statements by CSOs

<sup>82</sup> Asked only in August survey.

<sup>83</sup> Interview with a Commissioner, National Cohesion and Integration Commission on 17 February 2010



in employment. So far the Commission has summoned only some senior government officers to explain ethnic inequalities in their departments. On the whole, paying attention to ethnic inequalities is an important approach to examining the factors that prevent national cohesion. In light of this, the legislation on equal opportunities and equality should be enacted. This was proposed in 2009 but is yet to be enacted.

## TRANSPARENCY AND ACCOUNTABILITY

144. *New laws to fight corruption:* President Kibaki signed into law The Proceeds of Crime and Anti Money Laundering Act and the Arbitration (amendment) Act. The law provides for seizure of property of those found guilty.
145. *Fight against corruption:* During this period, the government convened a meeting of Permanent Secretaries, chief executives of parastatals, and provincial commissioners on 5 February 2010 to discuss strategies to fight corruption. The meeting was intended to give new impetus to the fight against corruption and restate the government's position on zero tolerance on corruption.<sup>84</sup> The government also announced renewed commitment to the fight against corruption by instructing that action be taken immediately on all audit reports.<sup>85</sup>
146. These measures are procedural; they are not focused on action even though the challenge is to punish or prosecute and convict those involved in high-level corruption. The preceding section noted that political expediency prevents the government from taking action on politicians involved in high-level corruption; senior politicians are not held accountable. Generally the public remains sceptical that the Coalition Government will fight corruption. The public has more faith in the international community to act in this respect.

Table 16: Do you think it is likely that the following institutions will fight against corruption in Kenya:

	December '08			August '09			January '10		
	<i>Likely</i>	<i>Unlikely</i>	<i>Don't know</i>	<i>Likely</i>	<i>Unlikely</i>	<i>Don't know</i>	<i>Likely</i>	<i>Unlikely</i>	<i>Don't know</i>
Coalition Government	47%	52%	1%	29%	69%	2%	41%	58%	1%
Political parties	26%	73%	1%	21%	76%	2%	28%	70%	1%
Civil society	52%	45%	3%	47%	45%	8%	56%	40%	3%
Place of worship	75%	23%	2%	72%	25%	2%	69%	29%	1%
Kenya Anti-Corruption Commission	57%	41%	2%	46%	49%	4%	49%	47%	3%
Media	--	--	--	80%	17%	3%	78%	20%	1%
Private	--	--	--	51%	38%	10%	57%	37%	6%

<sup>84</sup> See <http://www.statehousekenya.go.ke/>. Speech by President Kibaki during a workshop for permanent secretaries, accounting officers and chief executives of state corporations on strategies to fight or eliminate corruption the public service on 5<sup>th</sup> Feb. 2010. Accessed 2/10/2010

<sup>85</sup> See <http://www.communication.go.ke/> - Accessed on 2/23/2010. Published by Office of the government spokesman.

Sector									
International Community	--	--	--	69%	25%	6%	66%	29%	4%
Attorney General	--	--	--	--	--	--	24%	70%	6%

147. Many Kenyans also attribute corruption to income inequalities. As many as 78 per cent attributed corruption to income differences in December 2008. The number increased to 85 per cent and 86 per cent, respectively, both August 2009 and January 2010.

Table 17: Are differences in income responsible for any of the following:

	December '08			August '09			January '10		
	Yes	No	Don't know	Yes	No	Don't know	Yes	No	Don't know
<b>Crime</b>	77%	22%	1%	80%	17%	3%	85%	13%	2%
<b>Hatred between groups</b>	59%	38%	3%	76%	21%	3%	76%	21%	3%
<b>Corruption</b>	78%	20%	2%	85%	12%	3%	86%	12%	2%

## CONCLUSION

148. The report notes remarkable developments in the constitutional review process. The PSC reached an agreement on the harmonized draft constitution and presented the draft to parliament. The draft is at a critical state where the need for consensus is paramount to avoid divisions that could derail the process when the draft reaches the referendum stage.
149. The political will to implement constitutional reform seems to have been achieved and should be maintained as the referendum approaches. However, the Coalition Government continued to be plagued with numerous allegations of serious corruption, which raises the alarm on rampant impunity. Agents of impunity are likely to mobilise against any reform that threatens their interests. The constitutional review is not an exception in this context.

## 6. GENERAL CONCLUSION

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150. The report has highlighted a number of conclusions in the various sections and corresponding to the agenda items of the KNDR Agreements. This part of the reports re-emphasises the main ones. It suffices to mention that the opportunity for making hard decisions is threatened with closure as the country moves nearer to the referendum date and to the 2012 general elections.
151. The public is generally supportive of prosecution of leaders of illegal groups and perpetrators of post-election violence. The public is also supportive of any measures that can hold people accountable and end all forms of impunity including corruption. In this regard, people are generally supportive of the ICC intervention. Unfortunately, the ICC intervention has meant increased threats for witnesses. Deaths, threats and intimidation of potential witnesses have occasioned a need for witnesses to hide. Without a functional witnesses protection programme, not many witnesses will be willing to give evidence. A programme under the watch of human rights defenders and the international community/organisations is an imperative.
152. The problems facing IDPs are yet to be fully addressed. Unfortunately, the IDP problem has receded in significance; A few people seem to be articulating their plight to ensure they remain a national priority. It is important that a rights based approach be used in addressing their problems; participation of IDPs, openness and a high sense of accountability should be the guiding principles in resolving their problems. Related to this is also the problem of healing and reconciliation. This period notes improvement in terms the extent to which people accommodates others. Survey findings show that people are gradually getting a long with other communities.
153. Lack of coherence within the Coalition Government remains a sticking point. Without a clear mechanism for resolving disputes as well as absence of a framework to guide how the parties would operate within the coalition, the running of coalition is dependent on 'gentleman agreement' and the good will of the two Principals. In the absence of structured mechanisms for consultations, partisan interests are increasingly undermining the making of decisions within the coalition and are preventing promotion of greater interests of the nation. Informing these differences is the unresolved issue of power sharing. There are still disagreements on who has what power and whether power should be shared equally. Discussions are no longer about national good and interests. It is not recognised that power sharing is about helping both parties to unite in purpose – reforms for the country.
154. A number of initiatives under agenda item 4 have been undertaken. The institutional infrastructure for reform is much in place in several areas. But there are certainly some important reforms that should have been undertaken but have not. Critical among these are the comprehensive police and judicial reforms. Their respective taskforces have made important recommendations and some activities have begun in earnest. Implementation of these recommendations will lead to clear institutional and policy transformation in these institutions. The proposed new constitution, however, if implemented will open a new window to undertake even more far reaching changes in these and other public sector institutions. Indeed the new constitution opens a window and opportunities to transform the state and its institutions. But the focus on single issues is distracting attention away from what has always been the focus of the debate on a new constitution: reforming the state and its institutions as well as the society itself.